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189

THE

REVISED STATUTES

OF

ONTARIO, 1914,

BEING A

REVISION AND CONSOLIDATION OF THE REVISED STATUTES
OF ONTARIO, 1897, AND THE SUBSEQUENT PUBLIC
GENERAL ACTS

OF THE

LEGISLATURE OF ONTARIO.

VOL. I.



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14/3/16

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THE REVISED STATUTES OF ONTARIO, 1914

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STATUTE OF ONTARIO

Giving Effect to the Revised Statutes, 1914

3-4 GEORGE V.

CHAPTER 2.

An Act respecting the Revision and Consolidation
of the Statutes of Ontario.

[Assented to 6th May, 1913.]

WHEREAS by a Commission issued by the Lieutenant-Preamble
Governor in Council, dated the 23rd day of June,
1906, the Honourable Featherston Osler, one of the Justices
of the Court of Appeal; the Honourable Sir William Ralph
Meredith, Chief Justice of the Common Pleas; the Honour-
able James Thompson Garrow, one of the Justices of the
Court of Appeal; the Honourable William Purvis Rochfort
Street, one of the Judges of the King's Bench; the Honour-
able James Vernal Tetzell, one of the Judges of the Common
Pleas; the Honourable Francis Alexander Anglin, one of
the Judges of the Exchequer Division; the members of the
Executive Council of the Province of Ontario and Alexander
Grant Mackay and Allan Malcolm Dymond, Esquires, of
His Majesty's Counsel, Learned in the Law, were appointed
Commissioners for the purpose of consolidating the Public
Statutes of this Province and the said Featherston Osler
was appointed chairman and the said Allan Malcolm Dymond,
Secretary of the Commission; and whereas the Honourable
James Pitt Mabee, one of the Judges of the Chancery
Division of the High Court, and His Honour Colin G. Snider,
Judge of the County Court of the County of Wentworth,
were by a further Commission, issued by the Lieutenant-
Governor in Council bearing date the 26th day of September,
1906, also appointed Commissioners for the purpose aforesaid,
and associated as such with the Commissioners named in
the first mentioned Commission; and whereas by a further
Commission issued by the Lieutenant-Governor in Council,
dated the 7th day of December, 1906, reciting the said Com-

missions and the report of the Honourable the Attorney General that for the reasons therein mentioned it was advisable to enlarge the powers conferred upon the Commissioners, the Commissioners appointed as aforesaid were directed to prepare a draft revision of the Public Statutes of the Province and to report to His Honour the Lieutenant-Governor in Council such changes from time to time in any Act as the Commissioners deemed advisable having regard to the improvement of the wording and arrangement of the Statutes and the elimination therefrom of such matter as the Commissioners might deem obsolete, unsuitable or useless, and to submit such changes as the Commissioners might deem advisable in the public interest; and whereas the said the Honourable William Purvis Rochfort Street and the Honourable James Pitt Mabey subsequently departed this life; and whereas the said Commissioners have not completed the revision and consolidation of the said Statutes, but will complete the same at an early date; and whereas it is in the public interest that the said revision and consolidation should as soon as practicable and prior to the holding of another Session of this Legislature be authorized and issued as the Revised Statutes of Ontario; and whereas the Commissioners have from time to time reported various Acts and Statutes as revised and consolidated by them and the same as so revised and consolidated have been adopted and passed by this Legislature preparatory to the final report of the said Commissioners and the completion of the said consolidation.

THEREFORE, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Printed roll
to be
deposited
with Clerk
of Legis-
lative
Assembly.

1. So soon as the Commissioners shall report in writing signed by a majority of them, and by the Chairman, the completion of the said revision and consolidation, including therein the public and general Acts passed since the 23rd June, 1906, including those passed during the present Session, the Lieutenant-Governor may cause a printed roll thereof attested under his signature and countersigned by the Provincial Secretary to be deposited in the office of the Clerk of the Assembly.

Schedule
of Acts
repealed.

2. There shall be appended to the roll a schedule similar in form to Schedule A appended to *The Revised Statutes of 1897*, showing the Acts and parts of Acts which are embodied in the said roll and showing in the third column thereof the extent to which the Acts and parts of Acts in the Schedule are from the time of the coming in force of the Revised Statutes contained in the said roll to be repealed; and the Commissioners may include in the said Schedule all Acts and parts of Acts which, though not expressly repealed, were superseded by the Acts so consolidated, or are inconsistent therewith, and all parts of such Acts which were for a temporary purpose the force of which is spent.

3. The Commissioners in consolidating the said Statutes may make such alterations in their language as are requisite in order to preserve a uniform mode of expression, and may make such minor amendments as are necessary to bring out more clearly what they deem to be the intention of the Legislature, or to reconcile seemingly inconsistent enactments, or to correct clerical or typographical errors; the Commissioners may also direct that any of the enacting clauses in the statutes may be printed in bourgeois type, and that any of the sections which in the Revised Statutes of 1897 are in bourgeois type may be printed among the enacting clauses.

Powers of
commis-
sioners as to
alterations

4. The Lieutenant-Governor in Council after the deposit of the roll may by proclamation declare the day from and after which the same shall come into force and have effect as law by the designation of "The Revised Statutes of Ontario, 1914."

Proclama-
tion declar-
ing Statutes
in force.

5. On and from such day the same shall accordingly come into force and effect by the said designation to all intents as though the same were expressly embodied in and enacted by this Act to come into force and have effect on and from such day; and on and from the same day all the enactments in the several Acts and parts of Acts in the said Schedule mentioned shall so far as they relate to this Province stand and be repealed to the extent mentioned in the third column of the Schedule save only as hereinafter is provided.

Effect of
proclama-
tion.

6. Such repeal shall not be construed as intended to extend to such of the provisions of the Acts and parts of Acts as relate to subjects in regard to which the Parliament of Canada has exclusive powers of legislation; but the Acts and parts of Acts (in so far only as is necessary to give effect to every such provision) shall remain in full force and effect, subject, however, to section 8 of this Act.

Repeal not
to extend to
Acts over
which the
Dominion
Parliament
has juris-
diction.

7. The repeal of the Acts and parts of Acts shall not revive any Act or provision of law repealed by them; nor shall the repeal prevent the effect of any saving clause in the Acts and parts of Acts or the application of any of the Acts or parts of Acts or of any Act or provision of law formerly in force, to any transaction, matter or thing anterior to the said repeal, to which they would otherwise apply.

Saving as to
transac-
tions, etc.,
anterior to
the repeal.

8.—(1) The repeal of the Acts and parts of Acts shall not affect

Certain
matters
anterior to
the repeal

(a) Any penalty, forfeiture or liability incurred before the time of such repeal, or any proceedings for enforcing the same, had, done, completed or pending at the time of such repeal.

not to be
affected
by it.
Penalties,
etc.

(b) Nor any action, suit, judgment, decree, certificate, execution, process, order, rule or any proceeding,

Actions, etc.

matter or thing whatever respecting the same, had, done, made, entered, granted, completed, pending, existing or in force at the time of such repeal.

Acts, deeds, rights, etc.

(c) Nor any act, deed, right, title, interest, grant, assurance, descent, will, registry, by-law, rule, regulation, contract, lien, charge, matter or thing, had, done, made, acquired, established or existing at the time of such repeal.

Offices, etc.

(d) Nor any office, appointment, commission, salary, allowance, security, duty, or any matter or thing appertaining thereto, at the time of such repeal.

Marriages, etc.

(e) Nor any marriage, certificate or registry thereof, lawfully had, made, granted or existing before or at the time of such repeal.

And other matters, etc.

(f) Nor shall such repeal defeat, disturb, invalidate or prejudicially affect any other matter or thing whatsoever, had, done, completed, existing or pending at the time of such repeal.

But the same shall remain valid, etc.

(2) But every such

(a) Penalty, forfeiture and liability,

(b) Action, suit, judgment, decree, certificate, execution, prosecution, order, rule, proceeding, matter, or thing,

(c) Act, deed, right, title, interest, grant, assurance, descent, will, registry, by-law, rule, regulation, contract, lien, charge, matter or thing,

(d) Office, appointment, commission, salary, allowance, security, and duty,

(e) Marriage, certificate and registry thereof, and

(f) Every such other matter and thing, and the force and effect thereof,

and may be enforced, etc., and under what laws.

may and shall remain and continue as if no such repeal had taken place, and, so far as necessary, may and shall be continued, prosecuted, enforced and proceeded with under the Revised Statutes and other the statutes and laws having force in this Province, so far as applicable thereto, and subject to the provisions of the several statutes and laws.

Revised Statutes not to be deemed new laws.

9.—(1) The Revised Statutes shall not be held to operate as new laws, but shall be construed and have effect as a consolidation of the law as contained in the Acts and parts of Acts so repealed, and for which the said Revised Statutes are substituted, and the Legislature is not to be deemed to have adopted the construction which may by judicial decision, or

otherwise, have been placed upon the language of any of the statutes included amongst the Revised Statutes.

(2) The various provisions in the Revised Statutes corresponding to and substituted for the provisions of the Acts and parts of Acts so repealed, shall, where they are the same in effect as those of the Acts and parts of Acts so repealed, be held to operate retrospectively as well as prospectively, and to have been passed upon the days respectively upon which the Acts and parts of Acts so repealed came into effect.

(3) If upon any point the provisions of the Revised Statutes are not in effect the same as those of the repealed Acts and parts of Acts for which they are substituted, then as respects all transactions matters and things subsequent to the time when the Revised Statutes take effect, the provisions contained in them shall prevail, but as respects all transactions, matters and things anterior to the said time, the provisions of the said repealed Acts and parts of Acts shall prevail.

(4) The marginal notes and headings in the body of the Revised Statutes and references to former enactments, and sections printed in bourgeois type which may appear thereon, shall be held to form no part of the said Statutes but to be inserted for convenience of reference only.

10. Any reference in any former Act remaining in force, or in any instrument or document, to any Act or enactment so repealed, shall, after the Revised Statutes take effect, be held, as regards any subsequent transaction, matter or thing, to be a reference to the enactments in the Revised Statutes having the same effect as such repealed Act or enactment.

11. The insertion of any Act in the said Schedule A shall not be construed as a declaration that such Act or any part of it was or was not in force immediately before the coming into force of the said Revised Statutes.

12. Copies of the said Revised Statutes, printed by the King's Printer from the roll so deposited, shall be received as evidence of the said Revised Statutes in all Courts and places whatsoever.

13. The laws relating to the distribution of the printed copies of the Statutes shall not apply to the said Revised Statutes, but the same shall be distributed in such numbers and to such persons only as the Lieutenant-Governor in Council may direct.

14. This Act shall be printed with the Revised Statutes, and shall be subject to the same rules of construction as the said Revised Statutes.

How they
may be
cited.

15. Any chapter of the Revised Statutes may be cited and referred to in any Act or proceeding whatever, either by its title as an Act, or by its short title, or by using the expression "*The Revised Statute respecting—*" (adding the remainder of the title given at the beginning of the particular chapter), or by using the expression "*The Revised Statutes of Ontario, 1914, chapter*" (adding the number of the particular chapter in the copies printed by the King's Printer).

REVISED STATUTES OF ONTARIO

1914.

SECTION I.

PRELIMINARY.

CHAPTER 1.

An Act respecting the Form and Interpretation of the Statutes.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Interpretation Act*. Short title.
7 Edw. VII. c. 2, s. 1.

2. The provisions of this Act shall extend and apply Application of Act. to every Act of this Legislature contained in these Revised Statutes or hereafter passed, except in so far as any such provision

(a) is inconsistent with the intent or object of such Act;
or,

(b) would give to any word, expression or clause of any Act an interpretation inconsistent with the context; or,

(c) is in any such Act declared not applicable thereto.
7 Edw. VII. c. 2, s. 6.

3. Where an Act contains an interpretation section or provision, the same shall be read and construed as subject Interpretation sections in other Acts. to the same exceptions as those contained in section 2.
8 Edw. VII. c. 33, s. 1.

Application to
the Act itself.

4. The provisions of this Act shall apply to the construction thereof and to the words and expressions used therein. 7 Edw. VII. c. 2, s. 11.

RULES OF CONSTRUCTION.

Law always
speaking.

5. The law shall be considered as always speaking, and whenever any matter or thing is expressed in the present tense, the same is to be applied to the circumstances as they arise, so that effect may be given to each Act and every part thereof according to its true intent and meaning. 7 Edw. VII. c. 2, s. 7, par. 1.

What may be
done under an
Act before date
of commence-
ment.

6. Where an Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any Order in Council, order, warrant, scheme, letters patent, rules, regulations or by-laws, to give notices, to prescribe forms or to do any other thing for the purposes of the Act, that power, unless the contrary intention appears, may be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction that any instrument made under the power, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, shall not come into operation until the Act comes into operation. 7 Edw. VII. c. 2, s. 7, par. 43.

Meaning of
expressions
used in instru-
ments issued
under any Act.

7. Where any Act confers power to make, grant or issue any Order in Council, order, warrant, scheme, letters patent, rules, regulations or by-laws, expressions used therein, unless the contrary intention appears, shall have the same meaning as in the Act conferring the power. 7 Edw. VII. c. 2, s. 7, par. 44.

Judicial
notice.

8. Every Act shall, unless by express provision it is declared to be a Private Act, be deemed to be a Public Act, and shall be judicially noticed by all Judges, Justices of the Peace, and others, without being specially pleaded. 7 Edw. VII. c. 2, s. 7, par. 39.

Effect of
Preamble.

9. The preamble of an Act shall be deemed a part thereof and intended to assist in explaining the purport and object of the Act. 7 Edw. VII. c. 2, s. 7, par. 40.

All Acts
remedial.

10. Every Act shall be deemed remedial, whether its immediate purport be to direct the doing of anything which this Legislature deems to be for the public good, or to prevent or punish the doing of anything which it deems to be contrary to the public good, and shall accordingly receive such fair,

large and liberal construction and interpretation as will best ensure the attainment of the object of the Act, and of the provision or enactment, according to the true intent, meaning and spirit thereof. 7 Edw. VII. c. 2, s. 7, par. 41. Construction.

11. No Act shall affect the rights of His Majesty, His Heirs or Successors, unless it is expressly stated therein that His Majesty shall be bound thereby. 7 Edw. VII. c. 2, s. 7. par. 53, *part*. The Crown.

12. No Act of the nature of a private Act shall affect the rights of any person, or body corporate, politic or collegiate, such only excepted as are therein mentioned or referred to. 7 Edw. VII. c. 2, s. 7, par. 53, *part*. Private Acts.

REPEAL, AMENDMENT AND CONSOLIDATION.

13. Every Act shall be construed as reserving to this Legislature the power of repealing or amending it, and of revoking, restricting, or modifying any power, privilege or advantage thereby vested in or granted to any person or party, whenever the repeal, amendment, revocation, restriction, or modification is deemed by the Legislature to be required for the public good. 7 Edw. VII. c. 2, s. 7, par. 45. Reservation of power to repeal or amend.

14. Where an Act is repealed or wherever any regulation is revoked, such repeal or revocation shall not, save as in this section otherwise provided, Repeal,—effect of.

- (a) revive any Act, enactment, regulation or thing not in force or existing at the time at which the revocation takes effect;
- (b) affect the previous operation of any Act, enactment, regulation or thing so repealed or revoked;
- (c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, enactment, regulation or thing so repealed or revoked;
- (d) affect any offence committed against any Act, enactment, regulation or thing so repealed or revoked, or any penalty or forfeiture or punishment incurred in respect thereof;
- (e) affect any investigation, legal proceeding or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Act, enactment, regulation or thing had not been repealed or revoked. 7 Edw. VII. c. 2, s. 7, par. 46.

When other provisions substituted.

15. If other provisions are substituted for those so repealed or revoked

- (a) all officers and persons acting under the Act, enactment, regulation or thing so repealed or revoked, shall continue to act as if appointed under the provisions so substituted until others are appointed in their stead;
- (b) all proceedings taken under the Act, enactment, regulation or thing so repealed or revoked, shall be taken up and continued under and in conformity with the provisions so substituted, so far as consistently may be;
- (c) in the recovery or enforcement of penalties and forfeitures incurred, and in the enforcement of rights existing or accruing under the Act, enactment, regulation or thing so repealed or revoked, or in any other proceeding in relation to matters which have happened before the repeal or revocation, the procedure established by the substituted provisions shall be followed so far as it can be adopted; and
- (d) if any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions of the Act, enactment, regulation or thing whereby such other provisions are substituted, the penalty, forfeiture or punishment, if imposed or adjudged after such repeal or revocation, shall be reduced or mitigated accordingly. 7 Edw. VII. c. 2, s. 7, par. 47.

Amendment, consolidation or revision.

16. Where any Act or enactment is repealed and other provisions are substituted by way of amendment, revision or consolidation

- (a) all regulations, orders, ordinances, rules and by-laws made under the repealed Act or enactment shall continue good and valid in so far as they are not inconsistent with the substituted Act or enactment until they are annulled and others made in their stead; and
- (b) any reference in any unrepealed Act, or in any rule, order or regulation made thereunder to such repealed Act or enactment, shall, as regards any subsequent transaction, matter or thing be held and construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject matter, and if there is no provision in the substituted Act or enactment relating to the same subject matter, the repealed Act or enactment shall stand good, and be read and con-

strued as unrepealed in so far, and in so far only, as is necessary to support, maintain or give effect to such repealed Act or enactment, or such rule, order or regulation made thereunder. 7 Edw. VII. c. 2, s. 7, par. 48.

17. The repeal of an Act or enactment shall not be deemed to be or to involve a declaration that such Act or enactment was, or was considered by the Legislature to have been, previously in force. 7 Edw. VII. c. 2, s. 7, par. 49.

Repeal of Act not a declaration that Act was in force.

18. The repeal or amendment of any Act shall not be deemed to be or to involve any declaration as to the previous state of the law. 7 Edw. VII. c. 2, s. 7, par. 50.

Repeal or amendment not a declaration of previous state of the law.

19. The amendment of any Act shall not be deemed to be or to involve a declaration that the law under such Act was, or was considered by the Legislature to have been, different from the law as it has become under such Act as so amended. 7 Edw. VII. c. 2, s. 7, par. 51.

Amendment of Act not a declaration of different state of law.

20. The Legislature shall not, by re-enacting an Act or enactment, or by revising, consolidating or amending the same, be deemed to have adopted the construction which has by judicial decision or otherwise, been placed upon the language used in such Act or enactment or upon similar language. 7 Edw. VII. c. 2, s. 7, par. 52.

Re-enactment, etc., not an adoption of judicial construction.

PROCLAMATIONS.

21. Where the Lieutenant-Governor is authorized to do any act by proclamation, such proclamation is to be understood to be a proclamation issued under an order of the Lieutenant-Governor in Council; but it shall not be necessary that it be mentioned in the proclamation that it is issued under such order. 7 Edw. VII. c. 2, s. 7, par. 11.

Lieutenant-Governor acting by proclamation.

CROWN APPOINTMENTS.

22. Authority to the Lieutenant-Governor to make an appointment to any office, by commission or otherwise, shall be deemed authority to appoint during pleasure. *See* 7 Edw. VII. c. 2, s. 7, par. 30.

Tenure of office.

OATHS.

23.—(1) Where by an Act of this Legislature or by a rule of the Assembly, or by an order, regulation or commission made or issued by the Lieutenant-Governor in Council under a law authorizing him to require the taking of evidence under oath, an oath is authorized or directed to be made, taken or administered, the oath may be administered

Administration of oaths.

Certificate of
administration
of oaths.

and a certificate of its having been made, taken or administered may be given by anyone named in the Act, rule, order, regulation or commission, or by a Judge of any Court, a Notary Public, Justice of the Peace, or Commissioner for taking affidavits, having authority or jurisdiction in the place where the oath is administered. 7 Edw. VII. c. 2, s. 7, par. 20.

Taking
declarations.

(2) Any officer authorized to administer an oath or take an affidavit may take any declaration authorized or required by an Act of this Legislature. 9 Edw. VII. c. 26, s. 4.

Authority of
justices.

(3) Every Justice of the Peace having authority in Ontario shall have the same powers to take and receive affidavits and affirmations as a Commissioner appointed under *The Commissioners for taking Affidavits Act*. 3-4 Geo. V. c. 18, s. 1 (3).

Authority
generally.

(4) In every case where an oath, affirmation or declaration is directed to be made before any person or officer, such person or officer shall have full power and authority to administer the same and to certify to its having been made. 7 Edw. VII. c. 2, s. 7, par. 19, *part*.

IMPRISONMENT.

Imprisonment,
place of.

24. If in any Act any person is directed to be imprisoned or committed to prison, the imprisonment or committal shall, if no other place is mentioned or provided by law, be in or to the common gaol of the locality in which the order for the imprisonment is made, or if there be no common gaol there, then in or to that common gaol which is nearest to such locality. 7 Edw. VII. c. 2, s. 7, par. 31.

Hard labour.

25. Where power to impose imprisonment is conferred by any Act it shall authorize the imposing of imprisonment with hard labour. 8 Edw. VII. c. 33, s. 1 (2), *part*.

OFFENCE UNDER MORE THAN ONE PROVISION.

Act constituting offence under more than one provision.

26. Where an act or omission constitutes an offence under two or more Acts, or an offence both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same act or omission. 7 Edw. VII. c. 2, s. 10.

CORPORATIONS.

Effect of words
constituting a
corporation.

27. In every Act, unless the contrary intention appears, words making any association or number of persons a corporation or body politic and corporate shall

- (a) vest in such corporation power to sue and be sued, to contract and be contracted with by their corporate name, to have a common seal, to alter or change the same at their pleasure, to have perpetual succession, to acquire and hold personal property or moveables for the purpose for which the corporation is constituted, and to alienate the same at pleasure;
- (b) vest in a majority of the members of the corporation the power to bind the others by their acts; and
- (c) exempt individual members of the corporation from personal liability for its debts, obligations or acts if they do not contravene the provisions of the Act incorporating them; 7 Edw. VII. c. 2, s. 7, par. 27.

IMPLIED PROVISIONS.

28. In every Act, unless the contrary intention appears, Implied provisions.
- (a) if anything is directed to be done by or before a Magistrate, or a Justice of the Peace, or other public functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done; As to jurisdiction.
 - (b) wherever power is given to any person, officer or functionary to do or to enforce the doing of any act or thing, all such powers shall be understood to be also given as are necessary to enable such person, officer or functionary to do or enforce the doing of such act or thing; 7 Edw. VII. c. 2, s. 7, par. 23, *part*. Implied powers.
 - (c) where an act or thing is required to be done by more than two persons, a majority of them may do it; 7 Edw. VII. c. 2, s. 7, par. 32. Acts to be done by more than two.
 - (d) where forms are prescribed, deviations therefrom not affecting the substance or calculated to mislead, shall not vitiate them; 7 Edw. VII. c. 2, s. 7, par. 35. Deviation from forms.
 - (e) if a power is conferred or a duty imposed on the holder of any office as such, the power may be exercised and the duty shall be performed from time to time as occasion requires; Powers and duties to be exercised and performed from time to time.
 - (f) if a power is conferred or a duty imposed on the holder of any office as such, the power may be exercised and the duty shall be performed by the holder for the time being thereof; 7 Edw. VII. c. 2, s. 7, pars. 33, 34. To be exercised and performed by holder of office for time being.

Power to make by-laws, etc., to confer power to alter.

(g) if power is conferred to make by-laws, regulations, rules or orders, it shall include power to alter or revoke the same from time to time and make others; 7 Edw. VII. c. 2, s. 7, par. 38.

Computation of time where time limited expires on a holiday.

(h) if the time limited by any Act for any proceeding or for the doing of anything under its provisions, expires or falls upon a holiday, the time so limited shall extend to, and such thing may be done on the day next following which is not a holiday; 7 Edw. VII. c. 2, s. 7, par. 18.

Number and gender.

(i) words importing the singular number or the masculine gender only shall include more persons, parties or things of the same kind than one, and females as well as males and the converse; 7 Edw. VII. c. 2, s. 7, par. 26.

Idem.

(j) a word interpreted in the singular number shall have a corresponding meaning when used in the plural; 3-4 Geo. V. c. 18, s. 1 (1).

Words authorizing appointment include power to remove.

(k) words authorizing the appointment of any public officer or functionary, or any deputy, shall include the power of removing him, reappointing him, or appointing another in his stead, from time to time in the discretion of the authority in whom the power of appointment is vested; 7 Edw. VII. c. 2, s. 7, par. 28.

Directions to public officer to apply to his successors and deputy.

(l) words directing or empowering a public officer or functionary to do any act or thing, or otherwise applying to him by his name of office, shall include his successors in such office and his or their lawful deputy; 7 Edw. VII. c. 2, s. 7, par. 29.

References to sections by numbers.

(m) where reference is made by number to two or more sections, subsections, paragraphs or clauses in any statute, the number first mentioned and the number last mentioned shall both be deemed to be included in the reference. 7 Edw. VII. c. 2, s. 7, par. 42.

WORDS AND TERMS.

Words and terms.

29. In every Act, unless the context otherwise requires,

"Act"

(a) "Act" shall include enactment.

"Affidavit."

(b) "Affidavit" shall, in the case of persons allowed by law to affirm or declare instead of swearing, include affirmation and declaration; 7 Edw. VII. c. 2, s. 7, par. 19, *part*.

(c) "Appellate Division" shall mean the Appellate Division of the Supreme Court.

- (d) "Assembly" shall mean the Legislative Assembly "Assembly." of Ontario; 8 Edw. VII. c. 33, s. 1, (2), *part.*
- (e) "County" shall include two or more counties united "County." for purposes to which the Act relates; 7 Edw. VII. c. 2, s. 7, par. 12.
- (f) "Divisional Court" shall mean a divisional court of "Divisional Court." the Appellate Division.
- (g) "Felony" shall mean any crime, which, before the "Felony." passing of *The Criminal Code, 1892*, of Canada, would have been a felony under the law of Canada; 7 Edw. VII. c. 2, s. 7, par. 25, *part.*
- (h) "Great Seal" shall mean the Great Seal of Ontario; "Great Seal." 7 Edw. VII. c. 2, s. 7, par. 10, *part.*
- (i) "Herein" used in any section of an Act shall be "Herein." understood to relate to the whole Act and not to that section only; 7 Edw. VII. c. 2, s. 7, par. 3.
- (j) "High Court Division" shall mean the High Court "High Court." Division of the Supreme Court. 3-4 Geo. V. c. 18, s. 1 (2).
- (k) "His Majesty," "Her Majesty," "The King," "His Majesty," "The Queen," or "The Crown," shall mean the etc." Sovereign of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas for the time being; 7 Edw. VII. c. 2, s. 7, par. 5.
- (l) "Holiday" shall include Sunday, New Year's Day, "Holiday." Good Friday, Easter Monday, Christmas Day, the birthday or the day fixed by proclamation of the Governor-General for the celebration of the birthday of the reigning Sovereign, Victoria Day, Dominion Day, Labour Day, and any day appointed by proclamation of the Governor-General or the Lieutenant-Governor as a public holiday or for a general Fast or Thanksgiving; and whenever any other holiday falls on a Sunday, the day next following shall be in lieu thereof a holiday; 7 Edw. VII. c. 2, s. 7, pars. 16, 17.
- (m) "Justice of the Peace" shall include two or more "Justice of the Peace." Justices of the Peace or Magistrates assembled or acting together; 7 Edw. VII. c. 2, s. 7, par. 23, *part.*
- (n) "Legally Qualified Medical Practitioner." "Only "Legally Qualified Medical Practitioner," or any words qualified medical practitioner." importing legal recognition of any person as a medical practitioner or member of the medical profession, shall mean a person registered under *The Ontario Medical Act*; 7 Edw. VII. c. 2, s. 7, par. 24. Rev. Stat. c. 161.

- "Lieutenant-Governor" or "Governor." (o) "Lieutenant-Governor" shall mean the Lieutenant-Governor of Ontario, or the Chief Executive Officer or Administrator for the time being carrying on the government of Ontario, by whatever title he is designated; 7 Edw. VII. c. 2, s. 7, par. 6.
- "Lieutenant-Governor in Council." (p) "Lieutenant-Governor in Council" shall mean the Lieutenant-Governor of Ontario, or person administering the government of Ontario for the time being, acting by and with the advice of the Executive Council of Ontario; 7 Edw. VII. c. 2, s. 7, par. 7.
- "Lower Canada." (q) "Lower Canada" shall mean all that part of Canada which formerly constituted the Province of Lower Canada; 7 Edw. VII. c. 2, s. 7, par. 9, *part*.
- "Magistrate." (r) "Magistrate" shall mean a Justice of the Peace, and shall include two or more Justices of the Peace or Magistrates assembled or acting together; 7 Edw. VII. c. 2, s. 7, par. 23, *part*.
- "May." (s) "May" shall be construed as permissive; 7 Edw. VII. c. 2, s. 7, par. 2, *part*.
- "Misdemeanour." (t) "Misdemeanour" shall mean any crime which before the passing of *The Criminal Code, 1892*, of Canada, would have been a misdemeanour under the law of Canada; 7 Edw. VII. c. 2, s. 7, par. 25, *part*.
- "Month." (u) "Month" shall mean a calendar month; 7 Edw. VII. c. 2, s. 7, par. 15, *part*.
- "Now." (v) "Now" and "Next" shall be construed as having reference to the time when the Act was presented for the Royal Assent; 7 Edw. VII. c. 2, s. 7, par. 4.
- "Oath." (w) "Oath" shall, in the case of persons allowed by law to affirm or declare instead of swearing, include affirmation and declaration; 7 Edw. VII. c. 2, s. 7, par. 19, *part*.
- "Person." (x) "Person" shall include any body corporate or politic, and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law; 7 Edw. VII. c. 2, s. 7, par. 13.
- "Proclamation." (y) "Proclamation" shall mean a proclamation under the Great Seal; 7 Edw. VII. c. 2, s. 7, par. 10, *part*.
- "Registrar." (z) "Registrar" shall include a deputy registrar; 7 Edw. VII. c. 2, s. 7, par. 22.
- "Rules of Court." (aa) "Rules of Court" when used in relation to any Court shall mean rules made by the authority hav-

ing power to make rules or orders regulating the practice and procedure of such court, or for the purpose of any Act directing or authorizing anything to be done by rules of court; 7 Edw. VII. c. 2, s. 7, pars. 36, 37.

- (bb) "Security" shall mean sufficient security, and "Sureties" shall mean sufficient sureties, and where these words are used, one person shall be sufficient therefor unless otherwise expressly required; 7 Edw. VII. c. 2, s. 7, par. 21. "Security."
- (cc) "Shall" shall be construed as imperative; 7 Edw. VII. c. 2, s. 7, par. 2, *part*. "Shall."
- (dd) "Supreme Court" shall mean Supreme Court of Ontario; 8 Edw. VII. c. 33, s. 1 (2), *part*. "Supreme Court."
- (ee) "Swear" shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirm and declare; and "Sworn" shall have a corresponding meaning; 7 Edw. VII. c. 2, s. 7, par. 19, *part*. "Swear,"
"Sworn."
- (ff) "United Kingdom" shall mean United Kingdom of Great Britain and Ireland; 7 Edw. VII. c. 2, s. 7, par. 8. "United Kingdom."
- (gg) "Upper Canada" shall mean all that part of Canada which formerly constituted the Province of Upper Canada; 7 Edw. VII. c. 2, s. 7, par. 9, *part*. "Upper Canada."
- (hh) "Writing," "Written," or any term of like import, shall include words printed, painted, engraved, lithographed, photographed, or represented or reproduced by any other mode in a visible form; 7 Edw. VII. c. 2, s. 7, par. 14. "Writing,"
"Written."
- (ii) "Year" shall mean a calendar year; 7 Edw. VII. c. 2, s. 7, par. 15, *part*. "Year."

SPECIAL INTERPRETATION CLAUSES.

30. The interpretation section of *The Judicature Act* shall extend to all Acts relating to legal matters. 7 Edw. VII. c. 2, s. 8. Interpretation section of Rev. Stat. c. 56, extension of application of.

31. The interpretation section of *The Municipal Act* shall extend to all Acts relating to municipal matters. 7 Edw. VII. c. 2, s. 9. Interpretation section of Rev. Stat. c. 192, application of.

CHAPTER 2.

An Act respecting the Statutes, their Printing and Distribution.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Statutes Act*.

Citation.

2. A Statute may be cited and referred to for all purposes either by its title or by its short title or by a reference to the number of the particular chapter in the Revised Statutes, or in the annual volume of Statutes printed by the King's Printer. 7 Edw. VII. c. 2, s. 2.

Enacting clause.

3. The following words in a Statute shall indicate the authority by virtue of which it is passed: "His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows." 7 Edw. VII. c. 2, s. 3.

Amendment or repeal during session in which passed.

4. Any Act of this Legislature may be amended, altered or repealed by any Act passed in the same session thereof. 7 Edw. VII. c. 2, s. 4.

Endorsement on Acts.

5.—(1) The Clerk of the Assembly shall endorse on every Act, immediately after the title of such Act, the day, month and year when the same was by the Lieutenant-Governor assented to, or reserved; in the latter case, the Clerk shall also endorse thereon the day, month and year when the Lieutenant-Governor has signified, either by speech or message to the Assembly, or by proclamation, that the same was laid before the Governor-General in Council, and that the Governor-General was pleased to assent thereto.

Commencement.

(2) Such endorsement shall be taken to be a part of the Act; and the date of the assent or signification, as the case may be, shall be the date of the commencement of the Act if no later commencement is therein provided. 7 Edw. VII. c. 2, s. 5.

Printing and distribution.

6. The Statutes shall be printed, published and distributed by the King's Printer in such manner as may from time to time be prescribed by the Lieutenant-Governor in Council and approved by resolution of the Assembly. 7 Edw. VII. c. 3, s. 1.

7. The Clerk of the Assembly shall furnish the King's ^{Clerk to furnish} Printer with a certified copy of every Act of the Legis- ^{copy of Act to} lature as soon as the same has been assented to, or if the ^{King's Printer.} bill has been reserved, as soon as the assent thereto has been signified in accordance with the provisions of *The British North America Act*. 7 Edw. VII. c. 3, s. 2.

8. The King's Printer shall, before the opening of every ^{Annual report} Session of the Assembly, make a report to the Lieutenant- ^{of distribution.} Governor, which shall be laid before the Assembly within fifteen days after the opening of such session, shewing the number of copies of the Acts of each session which have been printed and distributed by him since the last session, the departments, administrative bodies, officers and persons to whom the same have been distributed, the number of copies delivered to each, and under what authority, and the number of copies of the Acts of each session then remaining in his hands. 7 Edw. VII. c. 3, s. 3.

SECTION II.

TERRITORIAL DIVISION.

CHAPTER 3.

An Act respecting the Territorial Division of Ontario
for Municipal and Judicial purposes.

HIS MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Ontario,
enacts as follows:—

Short title.

1. This Act may be cited as *The Territorial Division Act*.
10 Edw. VII. c. 2, s. 1.

Existing or-
ganization
continued.

2. The territorial division of Ontario into Counties and
Districts shall continue as hereinafter set forth, and subject
to the provisions of section 4, for municipal and judicial
purposes such Counties, and for judicial purposes such
Districts shall respectively be composed as follows.

Brant.

1.—THE COUNTY OF BRANT

shall consist of the Townships of—

- | | |
|------------------------|---------------|
| 1. Brantford, | 4. Oakland, |
| 2. Burford, | 5. Onondaga, |
| 3. Dumfries, South, | 6. Tuscarora, |
| the City of Brantford, | |
| and the Town of Paris. | |

Bruce.

2.—THE COUNTY OF BRUCE

shall consist of the Townships of—

- | | |
|---------------|------------------|
| 1. Arran, | 9. Elderslie, |
| 2. Albemarle, | 10. Greenock, |
| 3. Amabel, | 11. Huron, |
| 4. Brant, | 12. Kincardine, |
| 5. Bruce, | 13. Kinloss, |
| 6. Carrick, | 14. Lindsay, |
| 7. Culross, | 15. St. Edmunds, |
| 8. Eastnor, | 16. Saugeen, |

The Towns of—

- | | |
|-----------------|---------------|
| 1. Chesley, | 4. Walkerton, |
| 2. Kincardine, | 5. Wiarton, |
| 3. Southampton, | |

And the Villages of—

- | | |
|----------------|---------------|
| 1. Hepworth, | 5. Tara, |
| 2. Lucknow, | 6. Teeswater, |
| 3. Paisley, | 7. Tiverton. |
| 4. Port Elgin, | |

The Indian Reserve at Cape Croker shall, for judicial purposes, be deemed part of the Township of Albemarle.

The Indian Reserve at Chiefs' Point and the Saugeen Indian Reserve north of the mouth of the Saugeen River, shall, for judicial purposes, be deemed part of the Township of Amabel.

3.—THE COUNTY OF CARLETON

Carleton.

shall consist of the Townships of—

- | | |
|------------------|-----------------|
| 1. Fitzroy, | 6. March, |
| 2. Gloucester, | 7. Marlborough, |
| 3. Goulburn, | 8. Nepean, |
| 4. Gower, North, | 9. Osgoode, |
| 5. Huntley, | 10. Torbolton, |

the City of Ottawa,
and the Villages of—

- | | |
|--------------|--------------|
| 1. Eastview, | 2. Richmond. |
|--------------|--------------|

4.—THE COUNTY OF DUFFERIN

Dufferin.

shall consist of the Townships of—

- | | |
|---------------------|----------------|
| 1. Amaranth, | 4. Melancthon, |
| 2. Garafraxa, East, | 5. Mono, |
| 3. Luther, East, | 6. Mulmur, |

the Town of Orangeville,
and the Villages of—

- | | |
|------------------|---------------|
| 1. Grand Valley, | 2. Shelburne. |
|------------------|---------------|

5.—THE COUNTY OF DUNDAS

Dundas.

shall consist of the Townships of—

- | | |
|--------------|-------------------|
| 1. Matilda, | 3. Williamsburgh, |
| 2. Mountain, | 4. Winchester. |

and the Villages of—

- | | |
|------------------|-----------------|
| 1. Chesterville, | 3. Morrisburgh, |
| 2. Iroquois, | 4. Winchester. |

Durham.

6.—THE COUNTY OF DURHAM

shall consist of the Townships of—

- | | |
|----------------|----------------|
| 1. Cartwright, | 4. Darlington, |
| 2. Cavan, | 5. Hope, |
| 3. Clarke, | 6. Manvers, |

the Towns of—

- | | |
|-----------------|---------------|
| 1. Bowmanville, | 2. Port Hope, |
|-----------------|---------------|

and the Villages of—

- | | |
|---------------|---------------|
| 1. Millbrook, | 2. Newcastle. |
|---------------|---------------|

Elgin.

7.—THE COUNTY OF ELGIN

shall consist of the Townships of—

- | | |
|-----------------------|---------------|
| 1. Aldborough, | 5. Malahide, |
| 2. Bayham, | 6. Southwold, |
| 3. Dorchester, South, | 7. Yarmouth, |
| 4. Dunwich, | |

the City of St. Thomas,

the Town of Aylmer,

and the Villages of—

- | | |
|------------------|-----------------|
| 1. Dutton, | 4. Springfield, |
| 2. Port Stanley, | 5. Vienna, |
| 3. Rodney, | 6. West Lorne. |

Essex.

8.—THE COUNTY OF ESSEX

shall consist of the Townships of—

- | | |
|-----------------------|----------------------|
| 1. Anderdon, | 9. Pelée, |
| 2. Colchester, North, | 10. Rochester, |
| 3. Colchester, South, | 11. Sandwich, East, |
| 4. Gosfield, North, | 12. Sandwich, South, |
| 5. Gosfield, South, | 13. Sandwich, West, |
| 6. Maidstone, | 14. Tilbury, North, |
| 7. Malden, | 15. Tilbury, West, |
| 8. Mersea, | |

the City of Windsor,

the Towns of—

- | | |
|-----------------|-----------------|
| 1. Amherstburg, | 5. Ojibway, |
| 2. Essex, | 6. Sandwich, |
| 3. Kingsville, | 7. Walkerville, |
| 4. Leamington, | |

and the Villages of—

- | | |
|-----------------|---------------|
| 1. Belle River, | 2. Ford City, |
|-----------------|---------------|

except that the Township of Pelée shall continue to be separate, for municipal purposes, from the County of Essex.

Frontenac.

9.—THE COUNTY OF FRONTENAC

shall consist of the Townships of—

- | | |
|-------------|--------------------|
| 1. Barrie, | 3. Canonto, North, |
| 2. Bedford, | 4. Canonto, South, |

- | | |
|---|-----------------------------|
| 5. Clarendon, | 12. Olden, |
| 6. Hinchinbrooke, | 13. Oso, |
| 7. Howe Island, | 14. Palmerston, |
| 8. Kennebec, | 15. Pittsburg, |
| 9. Kingston, | 16. Portland, |
| 10. Loughborough, | 17. Storrington, |
| 11. Miller, | 18. Wolfe Island (including |
| Simcoe Island, Horse Shoe Island and Mud Island.) | |
| the City of Kingston, | |
| and the Villages of— | |
| 1. Garden Island, | 2. Portsmouth. |

10.—THE COUNTY OF GLENGARRY

Glengarry.

shall consist of the Townships of—

- | | |
|-------------------------|---------------|
| 1. Charlottenburgh, | 3. Lancaster, |
| 2. Kenyon, | 4. Lochiel, |
| the Town of Alexandria, | |
| and the Villages of— | |
| 1. Lancaster, | 2. Maxville. |

11.—THE COUNTY OF GRENVILLE

Grenville.

shall consist of the Townships of—

- | | |
|-----------------------|------------------------|
| 1. Augusta, | 4. Oxford (on Rideau), |
| 2. Edwardsburgh, | 5. Wolford, |
| 3. Gower, South, | |
| the Town of Prescott, | |
| and the Villages of— | |
| 1. Cardinal, | 3. Merrickville. |
| 2. Kemptville, | |

12.—THE COUNTY OF GREY

Grey.

shall consist of the Townships of—

- | | |
|-----------------|--------------------|
| 1. Artemesia, | 9. Keppel, |
| 2. Bentinck, | 10. Normanby, |
| 3. Collingwood, | 11. Osprey, |
| 4. Derby, | 12. Proton, |
| 5. Egremont, | 13. Saint Vincent, |
| 6. Euphrasia, | 14. Sarawak, |
| 7. Glenelg, | 15. Sullivan, |
| 8. Holland, | 16. Sydenham, |
| the Towns of— | |
| 1. Durham, | 4. Owen Sound, |
| 2. Hanover, | 5. Thornbury, |
| 3. Meaford, | |
| 2—s. | |

and the Villages of—

- | | |
|----------------|------------------|
| 1. Chatsworth, | 4. Markdale, |
| 2. Dundalk, | 5. Neustadt. |
| 3. Flesherton, | 6. Shallow Lake, |

Haldimand.

13.—THE COUNTY OF HALDIMAND

shall consist of the Townships of—

- | | |
|-------------------|----------------|
| 1. Canborough, | 6. Oneida, |
| 2. Cayuga, North, | 7. Rainham, |
| 3. Cayuga, South, | 8. Seneca, |
| 4. Dunn, | 9. Sherbrooke, |
| 5. Moulton, | 10. Walpole, |

the Town of Dunnville,

and the Villages of—

- | | |
|---------------|-----------------|
| 1. Caledonia, | 3. Hagersville. |
| 2. Cayuga, | 4. Jarvis. |

Halton.

14.—THE COUNTY OF HALTON

shall consist of the Townships of—

- | | |
|-----------------|---------------|
| 1. Esquesing, | 3. Nelson, |
| 2. Nassagaweya, | 4. Trafalgar, |

the Towns of—

- | | |
|------------|--------------|
| 1. Milton, | 2. Oakville, |
|------------|--------------|

and the Villages of—

- | | |
|----------------|----------------|
| 1. Acton, | 3. Georgetown. |
| 2. Burlington, | |

Hastings.

15.—THE COUNTY OF HASTINGS

shall consist of the Townships of—

- | | |
|-----------------|-----------------|
| 1. Bangor, | 13. Madoc, |
| 2. Carlow, | 14. Marmora, |
| 3. Cashel, | 15. Mayo, |
| 4. Dungannon, | 16. McClure, |
| 5. Elzevir, | 17. Monteagle, |
| 6. Faraday, | 18. Rawdon, |
| 7. Grimsthorpe, | 19. Sidney, |
| 8. Herschel, | 20. Thurlow, |
| 9. Hungerford, | 21. Tudor, |
| 10. Huntingdon, | 22. Tyendinaga, |
| 11. Lake, | 23. Wicklow, |
| 12. Limerick, | 24. Wollaston, |

the City of Belleville,

the Towns of—

- | | |
|---------------|-------------|
| 1. Deseronto, | 2. Trenton, |
|---------------|-------------|

and the Villages of—

- | | |
|--------------|--------------|
| 1. Bancroft, | 4. Stirling, |
| 2. Madoc, | 5. Tweed. |
| 3. Marmora, | |

16.—THE COUNTY OF HURON

Huron.

shall consist of the Townships of—

- | | |
|--------------|---------------------|
| 1. Ashfield, | 9. Morris, |
| 2. Colborne, | 10. Stanley, |
| 3. Goderich, | 11. Stephen, |
| 4. Grey, | 12. Tuckersmith, |
| 5. Hay, | 13. Turnberry, |
| 6. Howick, | 14. Usborne, |
| 7. Hullett, | 15. Wawanosh, East, |
| 8. McKillop, | 16. Wawanosh, West. |

the Towns of—

- | | |
|--------------|--------------|
| 1. Clinton, | 3. Seaforth, |
| 2. Goderich, | 4. Wingham, |

and the Villages of—

- | | |
|--------------|--------------|
| 1. Bayfield, | 4. Exeter, |
| 2. Blyth, | 5. Hensall, |
| 3. Brussels, | 6. Wroxeter. |

17.—THE COUNTY OF KENT

Kent.

shall consist of the Townships of—

- | | |
|-------------|-------------------|
| 1. Camden, | 6. Orford, |
| 2. Chatham, | 7. Raleigh, |
| 3. Dover, | 8. Romney, |
| 4. Harwich, | 9. Tilbury, East, |
| 5. Howard, | 10. Zone, |

the City of Chatham,

the Towns of—

- | | |
|--------------|-----------------|
| 1. Blenheim, | 4. Ridgetown, |
| 2. Bothwell, | 5. Tilbury, |
| 3. Dresden, | 6. Wallaceburg. |

and the Village of—

- | |
|-----------------|
| 1. Thamesville. |
|-----------------|

18.—THE COUNTY OF LAMBTON

Lambton.

shall consist of the Townships of—

- | | |
|-----------------|---------------------------|
| 1. Bosanquet, | 8. Sarnia, |
| 2. Brooke, | 9. Sombra, including Wal- |
| 3. Dawn, | pole Island, St. Anne's |
| 4. Enniskillen, | Island and the other |
| 5. Euphemia, | Islands at the mouth |
| 6. Moore, | of the River St. Clair, |
| 7. Plympton, | 10. Warwick, |

the Towns of—

- | | |
|--------------|------------|
| 1. Forest, | 3. Sarnia. |
| 2. Petrolia, | |

and the Villages of—

- | | |
|-----------------|------------------|
| 1. Alvinston, | 5. Point Edward, |
| 2. Arkona, | 6. Thedford, |
| 3. Courtright, | 7. Watford, |
| 4. Oil Springs, | 8. Wyoming. |

Lanark.

19.—THE COUNTY OF LANARK

shall consist of the Townships of—

- | | |
|---------------------------------------|------------------------|
| 1. Bathurst, | 7. Elmsley, North, |
| 2. Beckwith, | 8. Lanark, |
| 3. Burgess, North, | 9. Lavant, |
| 4. Dalhousie and North
Sherbrooke, | 10. Montague, |
| 5. Darling, | 11. Pakenham, |
| 6. Drummond, | 12. Ramsay, |
| | 13. Sherbrooke, South, |

the Towns of—

- | | |
|--------------------|-------------------|
| 1. Almonte, | 3. Perth, |
| 2. Carleton Place, | 4. Smith's Falls, |
- and the Village of Lanark.

Leeds.

20.—THE COUNTY OF LEEDS

shall consist of the Townships of—

- | | |
|--------------------------------|-----------------------------------|
| 1. Bastard and Burgess, South, | 8. Leeds and Lansdowne,
Front, |
| 2. Crosby, North, | |
| 3. Crosby, South, | 9. Leeds and Lansdowne,
Rear, |
| 4. Elizabethtown, | |
| 5. Elmsley, South, | 10. Yonge, Front of, |
| 6. Front of Escott, | 11. Yonge and Escott, Rear, |
| 7. Kitley, | |

the Towns of Brockville and Gananoque,
and the Villages of—

- | | |
|--------------|--------------|
| 1. Athens, | 3. Westport. |
| 2. Newboro', | |

Lennox and
Addington.

21.—THE COUNTY OF LENNOX AND ADDINGTON

shall consist of the Townships of—

- | | |
|-----------------------------------|--|
| 1. Adolphustown, | 6. Fredericksburgh, North, |
| 2. Amherst Island, | 7. Fredericksburgh, South, |
| 3. Camden, | 8. Kaladar, Anglesea and
Effingham, |
| 4. Denbigh, Abinger and
Ashby, | 9. Richmond, |
| 5. Ernestown, | 10. Sheffield, |

the Town of Napanee,
and the Villages of—

- | | |
|----------|--------------|
| 1. Bath, | 2. Newburgh. |
|----------|--------------|

22.—THE COUNTY OF LINCOLN

Lincoln.

shall consist of the Townships of—

- | | |
|---------------|--------------------|
| 1. Caistor, | 5. Grimsby, North, |
| 2. Clinton, | 6. Grimsby, South, |
| 3. Gainsboro, | 7. Louth, |
| 4. Grantham, | 8. Niagara, |

the City of St. Catharines,

the Town of Niagara,

and the Villages of—

- | | |
|----------------|--------------------|
| 1. Beamsville, | 3. Merritton, |
| 2. Grimsby, | 4. Port Dalhousie. |

23.—THE COUNTY OF MIDDLESEX

Middlesex.

shall consist of the Townships of—

- | | |
|-----------------------|---------------------|
| 1. Adelaide, | 9. McGillivray, |
| 2. Biddulph, | 10. Metcalfe, |
| 3. Caradoc, | 11. Mosa, |
| 4. Delaware, | 12. Nissouri, West, |
| 5. Dorchester, North, | 13. Westminster, |
| 6. Ekfrid, | 14. Williams, East, |
| 7. Lobo, | 15. Williams, West, |
| 8. London, | |

the City of London,

the Towns of—

- | | |
|----------------------|---------------|
| 1. Parkhill, | 2. Strathroy, |
| and the Villages of— | |

- | | |
|-----------------|----------------|
| 1. Ailsa Craig, | 4. Newbury, |
| 2. Glencoe, | 5. Wardsville. |
| 3. Lucan, | |

24.—THE COUNTY OF NORFOLK

Norfolk.

shall consist of the Townships of—

- | | |
|-----------------------|----------------------------|
| 1. Charlotteville, | 6. Walsingham, South, (in- |
| 2. Houghton, | cluding Long Point), |
| 3. Middleton, | 7. Windham, |
| 4. Townsend, | 8. Woodhouse, |
| 5. Walsingham, North, | |
| the Town of Simcoe, | |
| and the Villages of— | |

- | | |
|----------------|----------------|
| 1. Delhi, | 3. Port Rowan, |
| 2. Port Dover, | 4. Waterford. |

25.—THE COUNTY OF NORTHUMBERLAND

Northumber-
land.

shall consist of the Townships of—

- | | |
|--------------|---------------|
| 1. Alnwick, | 3. Cramahe, |
| 2. Brighton, | 4. Haldimand, |

- | | |
|----------------------|------------------|
| 5. Hamilton, | 8. Percy, |
| 6. Monaghan, South, | 9. Seymour, |
| 7. Murray, | |
| the Towns of— | |
| 1. Cobourg, | 2. Campbellford, |
| and the Villages of— | |
| 1. Brighton, | 3. Hastings. |
| 2. Colborne, | |

Ontario.

26.—THE COUNTY OF ONTARIO

shall consist of the Townships of—

- | | |
|----------------------|-----------------------------|
| 1. Brock, | 7. Scugog, |
| 2. Mara, | 8. Thorah (including Canise |
| 3. Pickering, | or Thorah Island), |
| 4. Rama, | 9. Uxbridge, |
| 5. Reach, | 10. Whitby, East, |
| 6. Scott, | 11. Whitby, |
| the Towns of— | |
| 1. Oshawa, | 3. Whitby, |
| 2. Uxbridge, | |
| and the Villages of— | |
| 1. Beaverton, | 3. Port Perry. |
| 2. Cannington, | |

Oxford.

27.—THE COUNTY OF OXFORD

shall consist of the Townships of—

- | | |
|------------------------|-------------------|
| 1. Blandford, | 7. Oxford, North, |
| 2. Blenheim, | 8. Oxford, East, |
| 3. Dereham, | 9. Oxford, West, |
| 4. Nissouri, East, | 10. Zorra, East, |
| 5. Norwich, North, | 11. Zorra, West, |
| 6. Norwich, South, | |
| the City of Woodstock, | |
| the Towns of— | |
| 1. Ingersoll, | 2. Tillsonburg. |
| and the Villages of— | |
| 1. Embro, | 3. Tavistock. |
| 2. Norwich. | |

Peel.

28.—THE COUNTY OF PEEL

shall consist of the Townships of—

- | | |
|-----------------------|------------------|
| 1. Albion, | 4. Toronto, |
| 2. Caledon, | 5. Toronto Gore, |
| 3. Chinguacousy, | |
| the Town of Brampton, | |
| and the Villages of— | |
| 1. Bolton, | 2. Streetsville. |

29.—THE COUNTY OF PERTH

Perth.

shall consist of the Townships of—

- | | |
|---|-----------------|
| 1. Blanshard, | 6. Elma, |
| 2. Downie (including the Gore of Downie), | 7. Fullarton, |
| 3. Easthope, North, | 8. Hibbert, |
| 4. Easthope, South, | 9. Logan, |
| 5. Ellice, | 10. Mornington, |
| | 11. Wallace, |

the City of Stratford,
the Towns of—

- | | |
|--------------|----------------|
| 1. Listowel, | 3. St. Mary's. |
| 2. Mitchell, | |

And the Village of Milverton.

30.—THE COUNTY OF PETERBOROUGH

Peterborough.

shall consist of the Townships of—

- | | |
|-----------------------------|--------------------------|
| 1. Asphodel, | 7. Ennismore, |
| 2. Belmont and Methuen, | 8. Galway and Cavendish, |
| 3. Burleigh and Anstruther, | 9. Harvey, |
| 4. Chandos, | 10. Monaghan, North, |
| 5. Douro, | 11. Otonabee, |
| 6. Dummer, | 12. Smith, |

the City of Peterborough,
and the Villages of—

- | | |
|---------------|-------------|
| 1. Havelock, | 3. Norwood. |
| 2. Lakefield, | |

31.—THE COUNTY OF PRESCOTT

Prescott.

shall consist of the Townships of—

- | | |
|----------------------|------------------------|
| 1. Alfred, | 5. Longueuil, |
| 2. Caledonia, | 6. Plantagenet, North, |
| 3. Hawkesbury, East, | 7. Plantagenet, South, |
| 4. Hawkesbury, West, | |

the Towns of—

- | | |
|---------------------|-------------------|
| 1. Hawkesbury, | 2. Vankleek Hill, |
| and the Village of— | |
| 1. L'Orignal. | |

32.—THE COUNTY OF PRINCE EDWARD

Prince
Edward.

shall consist of the Townships of—

- | | |
|------------------|-----------------------|
| 1. Ameliasburgh, | 5. Marysburgh, North, |
| 2. Athol, | 6. Marysburgh, South, |
| 3. Hallowell, | 7. Sophiasburgh, |
| 4. Millier, | |

the Town of Picton,
and the Villages of—

- | | |
|----------------|----------------|
| 1. Bloomfield, | 2. Wellington. |
|----------------|----------------|

Renfrew.

33.—THE COUNTY OF RENFREW

shall consist of the Townships of—

- | | |
|-------------------|------------------|
| 1. Admaston, | 20. Lyndoch, |
| 2. Algona, North, | 21. Maria, |
| 3. Algona, South, | 22. Matawatchan, |
| 4. Alice, | 23. McKay, |
| 5. Bagot, | 24. McNab, |
| 6. Blithfield, | 25. Pembroke, |
| 7. Bromley, | 26. Petawawa, |
| 8. Brougham, | 27. Radcliffe, |
| 9. Brudenell, | 28. Raglan, |
| 10. Buchanan, | 29. Richards, |
| 11. Burns, | 30. Rolph, |
| 12. Clara, | 31. Ross, |
| 13. Fraser, | 32. Sebastopol, |
| 14. Grattan, | 33. Sherwood, |
| 15. Griffith, | 34. Stafford, |
| 16. Hagarty, | 35. Westmeath, |
| 17. Head, | 36. Wilberforce, |
| 18. Horton, | 37. Wylie, |
| 19. Jones, | |

the Towns of—

- | | |
|--------------|-------------|
| 1. Arnprior, | 3. Renfrew. |
| 2. Pembroke, | |

and the Villages of—

- | | |
|---------------|----------------------|
| 1. Eganville, | 3. Killaloe Station. |
| 2. Cobden, | |

Russell.

34.—THE COUNTY OF RUSSELL

shall consist of the Townships of—

- | | |
|---------------|----------------|
| 1. Cambridge, | 3. Cumberland, |
| 2. Clarence, | 4. Russell, |

the Town of Rockland,

and the Village of Casselman.

Simcoe.

35.—THE COUNTY OF SIMCOE

shall consist of the Townships of—

- | | |
|-----------------------|-----------------|
| 1. Adjala, | 9. Orillia, |
| 2. Essa, | 10. Oro, |
| 3. Flos, | 11. Sunnidale, |
| 4. Gwillimbury, West, | 12. Tay, |
| 5. Innisfil, | 13. Tecumseth, |
| 6. Matchedash, | 14. Tiny, |
| 7. Medonte, | 15. Tosorontio, |
| 8. Nottawasaga, | 16. Vespra, |

the Towns of—

- | | |
|-----------------|---------------------|
| 1. Alliston, | 5. Orillia, |
| 2. Barrie, | 6. Penetanguishene, |
| 3. Collingwood, | 7. Stayner, |
| 4. Midland, | |

and the Villages of—

- | | |
|---------------|----------------------|
| 1. Beeton, | 4. Creemore, |
| 2. Bradford, | 5. Tottenham. |
| 3. Coldwater, | 6. Victoria Harbour. |

36.—THE COUNTY OF STORMONT

Stormont.

shall consist of the Townships of—

- | | |
|--------------|----------------|
| 1. Cornwall, | 3. Osnabruck, |
| 2. Finch, | 4. Roxborough, |

the Town of Cornwall,
and the Village of Finch.

37.—THE COUNTY OF VICTORIA

Victoria.

shall consist of the Townships of—

- | | |
|-------------|-----------------|
| 1. Bexley, | 8. Laxton, |
| 2. Carden, | 9. Longford, |
| 3. Dalton, | 10. Mariposa, |
| 4. Digby, | 11. Ops, |
| 5. Eldon, | 12. Somerville, |
| 6. Emily, | 13. Verulam, |
| 7. Fenelon, | |

the Town of Lindsay,
and the Villages of—

- | | |
|-------------------|--------------------|
| 1. Bobcaygeon, | 4. Sturgeon Point, |
| 2. Fenelon Falls, | 5. Woodville. |
| 3. Omemee, | |

38.—THE COUNTY OF WATERLOO

Waterloo.

shall consist of the Townships of—

- | | |
|--------------------|--------------|
| 1. North Dumfries, | 4. Wilmot, |
| 2. Waterloo, | 5. Woolwich, |
| 3. Wellesley, | |

the City of Berlin—
the Towns of—

- | | |
|----------------------|-----------------|
| 1. Galt, | 3. Preston, |
| 2. Hespeler, | 4. Waterloo, |
| and the Villages of— | |
| 1. Ayr, | 3. New Hamburg. |
| 2. Elmira, | |

Welland.

39.—THE COUNTY OF WELLAND

shall consist of the Townships of—

- | | |
|-----------------|----------------|
| 1. Bertie, | 5. Stamford, |
| 2. Crowland, | 6. Thorold, |
| 3. Humberstone, | 7. Wainfleet, |
| 4. Pelham, | 8. Willoughby, |

the City of Niagara Falls,

the Towns of—

- | | |
|----------------------|-------------------|
| 1. Thorold, | 2. Welland, |
| and the Villages of— | |
| 1. Bridgeburg, | 4. Humberstone, |
| 2. Chippewa, | 5. Port Colborne. |
| 3. Fort Erie, | |

Wellington.

40.—THE COUNTY OF WELLINGTON

shall consist of the Townships of—

- | | |
|---------------------|-----------------|
| 1. Arthur, | 7. Maryborough, |
| 2. Eramosa, | 8. Minto, |
| 3. Erin, | 9. Nichol, |
| 4. Garafraxa, West, | 10. Peel, |
| 5. Guelph, | 11. Pilkington, |
| 6. Luther, West, | 12. Puslinch, |

the City of Guelph,

the Towns of—

- | | |
|----------------------|----------------|
| 1. Harriston, | 3. Palmerston, |
| 2. Mount Forest, | |
| and the Villages of— | |
| 1. Arthur, | 4. Elora, |
| 2. Clifford, | 5. Erin, |
| 3. Drayton, | 6. Fergus. |

Wentworth.

41.—THE COUNTY OF WENTWORTH

shall consist of the Townships of—

- | | |
|--------------|-----------------------|
| 1. Ancaster, | 5. Flamborough, East, |
| 2. Barton, | 6. Flamborough, West, |
| 3. Beverly, | 7. Glanford, |
| 4. Binbrook, | 8. Saltfleet, |

the City of Hamilton,

the Town of Dundas,

and the Village of Waterdown.

York.

42.—THE COUNTY OF YORK

shall consist of the Townships of—

- | | |
|------------------------|-----------------|
| 1. Etobicoke, | 6. Markham, |
| 2. Georgina, | 7. Scarborough, |
| 3. Gwillimbury, East, | 8. Vaughan, |
| 4. Gwillimbury, North, | 9. Whitechurch, |
| 5. King, | 10. York, |

the City of Toronto,
the Towns of—

- | | |
|----------------------|-----------------|
| 1. Aurora, | 2. Newmarket, |
| and the Villages of— | |
| 1. Holland Landing, | 6. Stouffville, |
| 2. Markham, | 7. Sutton, |
| 3. Mimico, | 8. Weston, |
| 4. New Toronto, | 9. Woodbridge, |
| 5. Richmond Hill, | |

43.—THE PROVISIONAL COUNTY OF HALIBURTON Haliburton.

shall consist of the Townships of—

- | | |
|---------------|------------------|
| 1. Anson, | 13. Hindon, |
| 2. Bruton, | 14. Lawrence, |
| 3. Cardiff, | 15. Livingstone, |
| 4. Clyde, | 16. Lutterworth, |
| 5. Dudley, | 17. McClintock, |
| 6. Dysart, | 18. Minden, |
| 7. Eyre, | 19. Monmouth, |
| 8. Glamorgan, | 20. Nightingale, |
| 9. Guilford, | 21. Sherborne, |
| 10. Harburn, | 22. Snowdon, |
| 11. Harcourt, | 23. Stanhope, |
| 12. Havelock, | |

but for judicial purposes not provided for by *The Hali-* Rev. Stat. 4.
burton Act, shall continue to be united to and form part of
the County of Victoria.

44.—THE TERRITORIAL DISTRICT OF ALGOMA Algoma.

shall consist of the Townships of—

- | | |
|-----------------------------|----------------|
| 1. Aberdeen, | 16. Clavet, |
| 2. Albert, | 17. Cobden, |
| 3. Anderson, | 18. Curtis, |
| 4. Archibald, | 19. Day, |
| 5. Auden, | 20. Dennis, |
| 6. Avenge, | 21. Deroche, |
| 7. Aweres, | 22. Devitt, |
| 8. Bannerman | 23. Duncan, |
| 9. Barker, | 24. Eilber, |
| 10. Bicknell, | 25. Esten, |
| 11. Boyce, | 26. Fenwick. |
| 12. Bridgland, | 27. Fintry, |
| 13. Bright and Bright Addi- | 28. Fisher, |
| tional, | 29. Fushimi, |
| 14. Casgrain, | 30. Galbraith, |
| 15. Chesley and Chesley Ad- | 31. Gaudette, |
| ditional, | 32. Gill, |

- | | |
|-------------------------------|------------------------------|
| 33. Gilmor, | 73. Otter, |
| 34. Gladstone, | 74. Palmer, |
| 35. Goldwin, | 75. Parke, |
| 36. Gould, | 76. Parkinson, |
| 37. Grasett, | 77. Patton, |
| 38. Hanlan, | 78. Pennefather, |
| 39. Haughton, | 79. Plummer and Plummer |
| 40. Haviland, | Additional, |
| 41. Herrick, | 80. Prince, |
| 42. Hilton, municipality of, | 81. Proctor, |
| 43. Hodgins, | 82. Ritchie, |
| 44. Idington, | 83. Rogers, |
| 45. Jarvis, | 84. Rose, |
| 46. Jocelyn, municipality of, | 85. Ryan, |
| 47. Johnson, | 86. Sankey, |
| 48. Kars, | 87. Scarfe, |
| 49. Kehoe, | 88. Shannon, |
| 50. Kincaid, | 89. Shedden, |
| 51. Kirkwood, | 90. Shields, |
| 52. Kohler, | 91. Shuel, |
| 53. Korah, | 92. Spragge, |
| 54. Laird, | 93. Staunton, |
| 55. Lefroy, | 94. St. Joseph, municipality |
| 56. Lewis, | of, |
| 57. Ley, | 95. St. Mary, |
| 58. Long, | 96. Stoddard, |
| 59. Mack, | 97. Striker, |
| 60. Macdonald, | 98. Studholme, |
| 61. McCoig, | 99. Tarbutt and Tarbutt |
| 62. McCrae, | Additional, |
| 63. McGiverin, | 100. Tarentorus, |
| 64. McGowan, | 101. Tennyson, |
| 65. McMahon, | 102. Thessalon River, |
| 66. McMillan, | 103. Thompson, |
| 67. Meredith, | 104. Tilley, |
| 68. Montgomery, | 105. Tupper, |
| 69. Morin, | 106. Vankoughnet, |
| 70. Mulloy, | 107. Victoria, |
| 71. Mulvey, | 108. Wells, |
| 72. Neely, | 109. Whitman, |
- the City of Sault Ste. Marie,
and the Towns of—

- | | |
|-----------------|---------------|
| 1. Blind River, | 3. Steelton, |
| 2. Bruce Mines, | 4. Thessalon, |

together with all the remaining territory included within the following limits:—

Commencing at a point on the north shore of Lake Huron at the southwest angle of the township of Harrow; thence due north astronomically along the west limit of the township of Harrow to the southeast angle of the township of Salter; thence due west astronomically along the south limit

thereof 6 miles, more or less, to the southwest angle of the said township; thence due north astronomically along the west limit thereof 6 miles to the northwest angle of said township; thence due east astronomically along the said north limit 6 miles to the northeast angle thereof; thence due north astronomically along the west limit of the township of Gough and townships numbered 118, 119 and 120, a distance of 24 miles, more or less, to the northwest angle of township numbered 120; thence due east astronomically along the north limit of township numbered 120, 6 miles, more or less, to the southwest angle of township numbered 114; thence due north astronomically along the west limit of townships numbered 114 and 115, 12 miles more or less, to the northwest angle of township numbered 115; thence continuing due north astronomically along O. L. Surveyor David Beatty's meridian line, 12 miles; thence due west astronomically 30 miles, more or less, to the 12th mile post on O. L. Surveyor Niven's meridian line; thence due north astronomically along said meridian line 18 miles, more or less, to the north limit of the Mississauga Forest Reserve; thence due west astronomically along said limit and limit produced 66 miles, more or less, to O. L. Surveyor T. B. Speight's meridian line of 1898; thence due north astronomically along said meridian line and its production north 82 miles to O. L. Surveyor Niven's base line; thence due east astronomically along said base line in latitude 48 degrees 27 minutes 54 seconds north to the 72nd mile post on said base line; thence due north astronomically a distance of 226 miles, more or less, to the Albany River; thence westerly up the Albany River to the limit between the districts of Algoma and Thunder Bay, which is a meridian of 85 degrees 20 minutes west longitude; thence due south along said meridian to the International boundary line in Lake Superior between the United States of America and the Dominion of Canada; thence southeasterly and easterly following said International boundary line through Lake Superior and the River St. Mary and Lake Huron to a point in Lake Huron between Drummond Island and Cockburn Island; thence easterly along the northerly limit of the territorial district of Manitoulin to a point due south of the southwest angle of the township of Harrow, and thence due north astronomically to the southwest angle of the township of Harrow, the place of beginning.

The Territorial District of Algoma shall form the Provisional Judicial District of Algoma.

Provisional
Judicial Dis-
trict of
Algoma.

The westerly boundary of the Huron Copper Bay and Mining Company's location is and has always been since the 25th day of April, 1890, the true and correct boundary line between the municipalities of Johnson, Tarbutt and Tarbutt Additional and the municipality of Plummer Additional.

Boundary line
between muni-
cipalities of
Johnson,
etc., and
Plummer de-
fined.

Manitoulin.

45.—THE TERRITORIAL DISTRICT OF MANITOULIN

shall consist of the Townships of—

- | | |
|----------------|------------------|
| 1. Allan, | 10. Gordon, |
| 2. Assiginack, | 11. Howland, |
| 3. Bidwell, | 12. Humboldt, |
| 4. Billings, | 13. Mills, |
| 5. Burpee, | 14. Robinson, |
| 6. Campbell, | 15. Rutherford, |
| 7. Carlyle, | 16. Sandfield, |
| 8. Carnarvon, | 17. Sheguiandah, |
| 9. Dawson, | 18. Tehkumah, |

and the Towns of Gore Bay, Little Current and the Village of Killarney,
and the Islands named:—

- | | |
|------------------|--------------------|
| 1. Barrie, | 10. Heywood, |
| 2. Badgeley, | 11. Lonely, |
| 3. Clapperton, | 12. McGregor, |
| 4. Club, | 13. Philip Edward, |
| 5. Cockburn, | 14. Rabbit, |
| 6. Crescent, | 15. Squaw, |
| 7. Duck Islands, | 16. Strawberry, |
| 8. Fitzwilliam, | 17. Vidal, |
| 9. George, | |

together with all the remaining territory included within the following limits:—

Commencing at a point on the north shore of Lake Huron, at its intersection with the east limit of the township of Humboldt; thence due north astronomically along the said east limit 10 miles, more or less, to the north limit of said township; thence due west astronomically along the north limits of said township, the township of Carlyle and Township No. 10, 23 miles, more or less, to the water's edge of the Georgian Bay or Lake Huron; thence westerly, southerly and southwesterly following the middle thread of the water between McGregor Island, LaCloche Indian Reserve and the most northerly point of land jutting out westerly of part of Township No. 10, to a point due south of the southeasterly end of Cloche Island; thence westerly following the middle thread of the water between Heywood Island, Strawberry Island and Great Manitoulin Island at Little Current on the south side, and Cloche Island and Bedford Island on the north side to a point midway between Bedford Island and Great Manitoulin Island; thence still westerly and northwesterly following the middle thread of the water between Amedroz Island and Clapperton Island, and north of Clapperton Island to a point midway between the Great Manitoulin Island and the north shore of Lake Huron; thence westerly following the middle thread of that portion of Lake Huron lying between

the north shore of Lake Huron and the Great Manitoulin Island to a point in the International boundary between the Province of Ontario and the United States of America; thence southerly following the said International boundary to a point south of the Great Duck Island; thence easterly to a point midway between the Great Manitoulin Island and Tobermory Harbor; thence easterly to a point in the Georgian Bay due south from the place of beginning; thence due north astronomically to the place of beginning.

The Territorial District of Manitoulin shall form the Provisional Judicial District of Manitoulin.

Provisional
Judicial
District of
Manitoulin.

46.—THE TERRITORIAL DISTRICT OF THUNDER BAY

Thunder Bay.

shall consist of the Townships of—

- | | |
|----------------|-------------------------|
| 1. Ames, | 24. Lyon, |
| 2. Bell, | 25. Marks, |
| 3. Bain, | 26. McGregor, |
| 4. Barlow, | 27. McIntyre, |
| 5. Blake, | 28. McTavish, |
| 6. Booth, | 29. Moss, |
| 7. Byron, | 30. Neebing, |
| 8. Chipman, | 31. Neebing Additional, |
| 9. Conmee, | 32. Nepigon, |
| 10. Crooks, | 33. O'Connor, |
| 11. Dorion, | 34. Oliver, |
| 12. Fernow, | 35. O'Meara, |
| 13. Fraleigh, | 36. Pic, |
| 14. Gillies, | 37. Paipoonge, |
| 15. Goodwin, | 38. Pearson, |
| 16. Gorham, | 39. Pardee, |
| 17. Henderson, | 40. Purdom, |
| 18. Homer, | 41. Raynar, |
| 19. Innes, | 42. Scoble, |
| 20. Klotz, | 43. Selwyn, |
| 21. Ledger, | 44. Sibley, |
| 22. Low, | 45. Strange, |
| 23. Lybster, | 46. Ware, |

and the cities of Fort William and Port Arthur,

together with the territory lying west of the meridian of 85 degrees 20 minutes west of west longitude and east of a line drawn due north and south through the most easterly point of Hunter's Island.

The Territorial District of Thunder Bay shall form the Provisional Judicial District of Thunder Bay.

Provisional
Judicial
District of
Thunder Bay.

Muskoka.

47.—THE TERRITORIAL DISTRICT OF MUSKOKA

shall consist of the Townships of—

- | | |
|--------------|-----------------|
| 1. Baxter, | 12. Monck, |
| 2. Brunel, | 13. Morrison, |
| 3. Cardwell, | 14. Muskoka, |
| 4. Chaffey, | 15. Oakley, |
| 5. Draper, | 16. Ridout, |
| 6. Franklin, | 17. Ryde, |
| 7. Freeman, | 18. Sinclair, |
| 8. Gibson, | 19. Stephenson, |
| 9. Macaulay, | 20. Stisted, |
| 10. McLean, | 21. Watt, |
| 11. Medora, | 22. Wood, |

And the Towns of—

- | | |
|-----------------|----------------|
| 1. Bracebridge, | 3. Huntsville, |
| 2. Gravenhurst, | |

And the Village of Port Carling.

Together with the islands in the Georgian Bay lying west of the said territory and adjacent thereto, and the islands in the River Severn lying northerly of the middle of the main channel of the River Severn and adjacent to the townships of Baxter, Wood and Morrison.

Provisional
Judicial
District of
Muskoka.

The Territorial District of Muskoka shall form the Provisional Judicial District of Muskoka.

Parry Sound.

48.—THE TERRITORIAL DISTRICT OF PARRY SOUND

shall consist of the Townships of—

- | | |
|---------------|-----------------------|
| 1. Armour, | 20. Himsworth, North, |
| 2. Bethune, | 21. Himsworth, South, |
| 3. Blair, | 22. Humphry, |
| 4. Brown, | 23. Joly, |
| 5. Burpee, | 24. Laurier, |
| 6. Burton, | 25. Lount, |
| 7. Carling, | 26. Machar, |
| 8. Chapman, | 27. Mills, |
| 9. Christie, | 28. McConkey, |
| 10. Conger, | 29. McDougall, |
| 11. Cowper, | 30. McKellar, |
| 12. Croft, | 31. McKenzie, |
| 13. Ferguson, | 32. McMurrich, |
| 14. Ferrie, | 33. Monteith, |
| 15. Foley, | 34. Mowat, |
| 16. Gurd, | 35. Nipissing, |
| 17. Hagerman, | 36. Patterson, |
| 18. Hardy, | 37. Perry, |
| 19. Harrison, | 38. Pringle, |

- | | |
|----------------|-----------------|
| 39. Proudfoot, | 43. Strong, |
| 40. Ryerson, | 44. Wallbridge, |
| 41. Shawanaga, | 45. Wilson, |
| 42. Spence, | |

the Towns of—

- | | |
|-----------------|-----------------|
| 1. Parry Sound, | 3. Powassan, |
| 2. Kearney, | 4. Trout Creek, |

and the Villages of—

- | | |
|------------------|---------------|
| 1. Burk's Falls, | 3. Sundridge. |
| 2. South River, | |

together with any other territory included within the following description, that is to say:—

Commencing at a point where the southerly boundary of the township of Conger intersects the waters of the Georgian Bay, being the southwest corner of the township of Conger; thence easterly along the southerly boundary of the townships of Conger and Humphry to the southeast corner of the township of Humphry; thence northerly along the easterly boundary of Humphry to the north-east corner of Humphry; thence easterly along the southerly boundaries of the townships of Monteith, McMurrich, Perry and Bethune to the south-east corner of Bethune; thence northerly along the easterly boundaries of the townships of Bethune, Proudfoot, Joly and Laurier to the south boundary of the township of Himsworth; thence along the south and east boundaries of Himsworth to the north-east corner of Himsworth; thence westerly along the northerly boundary of Himsworth to Lake Nipissing; thence westerly along the main channel of said lake and along the main channel of French River, and along the southerly boundary of the district of Nipissing to where the westerly boundary of the said district of Nipissing strikes the water's edge of the Georgian Bay; thence south-easterly along the easterly shore of the said Georgian Bay to the place of beginning, including Parry Island and the islands opposite to and along the said easterly shore of the Georgian Bay.

The Territorial District of Parry Sound shall form the Provisional Judicial District of Parry Sound.

Provisional
Judicial
District of
Parry Sound.

49.—THE TERRITORIAL DISTRICT OF RAINY RIVER

Rainy River.

shall consist of the Townships of—

- | | |
|----------------|---------------|
| 1. Atwood, | 7. Carpenter, |
| 2. Aylesworth, | 8. Crozier, |
| 3. Barwick, | 9. Curran, |
| 4. Bennett, | 10. Dance, |
| 5. Blue, | 11. Devlin, |
| 6. Burriss, | 12. Dewart, |

3—s.

- | | |
|------------------------|--------------------|
| 13. Dilke, | 29. Pattullo, |
| 14. Dobie, | 30. Potts, |
| 15. Farrington, | 31. Pratt, |
| 16. Fleming, | 32. Ramsay Wright, |
| 17. Halkirk, | 33. Richardson, |
| 18. Kingsford, | 34. Roddick, |
| 19. Lash, | 35. Roseberry, |
| 20. Mather, | 36. Shenston, |
| 21. Miscampbell, | 37. Sifton, |
| 22. Morley, | 38. Spohn, |
| 23. Morley Additional, | 39. Sutherland, |
| 24. Morson, | 40. Tait, |
| 25. McCaul, | 41. Tovell, |
| 26. McCrosson, | 42. Watten, |
| 27. McIrvine, | 43. Woodyatt, |
| 28. Nelles, | 44. Worthington, |

and the Towns of Fort Frances and Rainy River, together with any other territory included within the following limits, that is to say:—

Commencing where the boundary line between the districts of Rainy River and Thunder Bay intersects the International boundary between the Province of Ontario and the United States of America in Seiganagance Lake; thence due north astronomically along said district boundary to the 48th mile post thereon in latitude 49 degrees 0 minutes 6 seconds north; thence due west astronomically 89 miles, 71 chains, 7 links, more or less, to the 18th mile post on Ontario Land Surveyor Alexander Niven's 6th meridian line; thence due north astronomically along said meridian line 6 miles to the 24th mile post thereon; thence due west astronomically 45 miles, more or less, to the east shore of Sabaskong Bay of the Lake of the Woods; thence westerly and southwesterly along the south shore of said bay and along the east shore of the Lake of the Woods to where the same is intersected by the 49th parallel of latitude; thence due west astronomically 15 miles, more or less, to said International boundary; thence southerly along said International boundary to the mouth of the Rainy River; thence southeasterly and easterly up Rainy River along said International boundary to Rainy Lake; thence easterly, southerly and southeasterly following the said International boundary through Rainy Lake and the several lakes, rivers and portages forming the International boundary, to the place of beginning.

Provisional
Judicial
District of
Rainy River.

The Territorial District of Rainy River shall form the Provisional Judicial District of Rainy River.

Nipissing.

50.—THE TERRITORIAL DISTRICT OF NIPISSING

shall consist of the Townships of—

- | | |
|-------------|--------------|
| 1. Airy, | 4. Askin, |
| 2. Anglin, | 5. Aston, |
| 3. Antoine, | 6. Badgerow, |

- | | |
|------------------|------------------|
| 7. Ballantyne, | 59. Hobbs, |
| 8. Barron, | 60. Hugel, |
| 9. Bastedo, | 61. Hunter, |
| 10. Beaucage, | 62. Kenny, |
| 11. Beauchamp, | 63. Kirkpatrick, |
| 12. Belfast, | 64. Latchford, |
| 13. Bertram, | 65. Lauder, |
| 14. Biggar, | 66. Law, |
| 15. Bishop, | 67. Leroche, |
| 16. Blackstocke, | 68. Lister, |
| 17. Blyth, | 69. Lockhart, |
| 18. Bonfield, | 70. Loudon, |
| 19. Boyd, | 71. Lyell, |
| 20. Bower, | 72. Lyman, |
| 21. Briggs, | 73. Master, |
| 22. Bronson, | 74. Mattawan, |
| 23. Butt, | 75. Merrick, |
| 24. Calvin, | 76. Milne, |
| 25. Caldwell, | 77. Mulock, |
| 26. Cameron, | 78. Murchison, |
| 27. Canisbay, | 79. McCallum, |
| 28. Canton, | 80. McCraney, |
| 29. Cassels, | 81. McLaren, |
| 30. Chambers, | 82. McLaughlin, |
| 31. Charlton, | 83. McPherson, |
| 32. Chisholm, | 84. McWilliams, |
| 33. Clancy, | 85. Niven, |
| 34. Clement, | 86. Notman, |
| 35. Commanda, | 87. Odrig, |
| 36. Crerar, | 88. Olive, |
| 37. Dana, | 89. Osborne, |
| 38. Deacon, | 90. Osler, |
| 39. Devine, | 91. Papineau, |
| 40. Dickens, | 92. Pardo, |
| 41. Dickson, | 93. Paxton, |
| 42. Edgar, | 94. Peck, |
| 43. Eddy, | 95. Pedley, |
| 44. Falconer, | 96. Pentland, |
| 45. Fell, | 97. Phelps, |
| 46. Ferris, | 98. Poitras, |
| 47. Field, | 99. Preston, |
| 48. Finlayson, | 100. Riddell, |
| 49. Fitzgerald, | 101. Sabine, |
| 50. French, | 102. Scholes, |
| 51. Freswick, | 103. Sisk, |
| 52. Garrow, | 104. Springer, |
| 53. Gibbons, | 105. Sproule, |
| 54. Gladman, | 106. Stewart, |
| 55. Gooderham, | 107. Strathcona, |
| 56. Grant, | 108. Strathy, |
| 57. Guthrie, | 109. Stratton, |
| 58. Hammell, | 110. Thistle, |

- | | |
|------------------|--------------|
| 111. Torrington, | 115. Wilkie, |
| 112. Vogt, | 116. Wilkes, |
| 113. White, | 117. Wyse, |
| 114. Widdifield, | 118. Yates, |

and the towns of—

Bonfield,
Cache Bay,
Mattawa,
North Bay,
Sturgeon Falls,

together with any other territory included within the following limits:

Commencing at the southeast angle of the township of Falconer; thence west along the south limit thereof to the east limit of the township of Martland; thence north along the east limits of the townships of Martland, Haddo, Casimir, to the south limit of the township of Dunnet; thence east along said limit to the southeast angle of the township of Dunnet; thence northerly along the east limits of the townships of Dunnet, Ratter, Henry, Janes and McNish to the north limit of the township of McNish; thence continuing northerly along the east limits of the townships of MacBeth, Afton, Armagh, Delhi and Shelburne 30 miles more or less to the northeast angle of the last mentioned township; thence east along the north limits of the townships of Canton and Aston and continuing east astronomically a distance of 30 miles more or less to the southwest angle of the township of Lorrain; thence south astronomically along the west limit of the township of South Lorrain 12 miles to the northeast angle of the township of Riddell; thence east astronomically $10\frac{1}{2}$ miles more or less to the Inter-Provincial Boundary in Lake Temiskaming between the Provinces of Ontario and Quebec; thence along the said boundary between Ontario and Quebec southerly and southeasterly to the northwest angle of the township of Clara; thence southerly and easterly along the westerly and southerly boundaries of the townships of Clara, Maria and Head to the westerly boundary of the township of Rolph; thence southerly along the westerly boundaries of the townships of Rolph, Wylie, McKay and Fraser to the northeast angle of the township of Richards; thence westerly along the northerly boundary of the townships of Richards and Burns to the northwest angle of the said township of Burns; thence southerly along the westerly boundary of Burns to the northeast angle of the township of Jones; thence westerly along the northerly boundary of Jones to the northeast angle of the township of Lyell; thence southerly along the easterly boundary of Lyell to the southeast angle of Lyell; thence westerly along the southerly boundaries of the townships of Lyell and Sabine to the easterly boundary of the township of Clyde; thence northerly along the easterly boundaries of the townships of Clyde and Nightingale to the northeast angle of the township of Nightingale; thence west-

erly along the northerly boundary of the townships of Nightingale, Lawrence, Livingston and McClintock to the easterly boundary of the township of St. Clair; thence northerly along the easterly boundary of St. Clair to the southerly boundary of the township of Bethune; thence easterly to the southeast corner of Bethune; thence northerly along the easterly boundaries of the townships of Bethune, Proudfoot, Joly and Laurier to the south boundary of the township of Himsworth; thence along the southerly and easterly boundaries of Himsworth to the northeast angle of Himsworth; thence westerly along the northerly boundary of Himsworth to Lake Nipissing; thence westerly along the main channel of said lake and along the main channel of the French River to a point midway between islands 23 and 24 in said river; thence west astronomically to the water's edge of the Indian Reserve Island of Okickendawt; thence northerly, westerly, southerly and southeasterly and westerly following the water's edge of said island to a point due east astronomically from the south limit of the township of Falconer produced; thence due west crossing the north channel of the French River and along the south limit of the township of Latchford to the southeast angle of the township of Falconer, the place of beginning.

The Territorial District of Nipissing shall form the Provisional Judicial District of Nipissing.

Provisional
Judicial
District of
Nipissing.

51.—THE TERRITORIAL DISTRICT OF SUDBURY Sudbury.

shall consist of the Townships of—

- | | |
|-----------------|----------------|
| 1. Acadia, | 24. Howell, |
| 2. Afton, | 25. Broder, |
| 3. Allen, | 26. Browning, |
| 4. Amyot, | 27. Brunswick, |
| 5. Antrim, | 28. Burrows, |
| 6. Appleby, | 29. Burwash, |
| 7. Armagh, | 30. Cabot, |
| 8. Asquith, | 31. Calder, |
| 9. Awrey, | 32. Capreol, |
| 10. Aylmer, | 33. Carter, |
| 11. Baldwin, | 34. Cartier, |
| 12. Balfour, | 35. Cascaden, |
| 13. Beaumont, | 36. Casimir, |
| 14. Beemer, | 37. Champagne, |
| 15. Benneweiss, | 38. Chapleau, |
| 16. Beresford, | 39. Cherriman, |
| 17. Beulah, | 40. Chewett, |
| 18. Bigelow, | 41. Churchill, |
| 19. Bigwood, | 42. Clary, |
| 20. Blezard, | 43. Cleland, |
| 21. Blewett, | 44. Cochrane, |
| 22. Borden, | 45. Collins, |
| 23. Botha, | 46. Connaught, |

- | | |
|-------------------|-------------------|
| 47. Coppel, | 100. Hanmer, |
| 48. Cotton, | 101. Hardiman, |
| 49. Cosby, | 102. Hart, |
| 50. Cox, | 103. Harrow, |
| 51. Craig, | 104. Harty, |
| 52. Creighton, | 105. Hassard, |
| 53. Creelman, | 106. Hawley, |
| 54. Crothers, | 107. Hazen, |
| 55. Dale, | 108. Hendrie, |
| 56. D'Arcy, | 109. Hennessy, |
| 57. Davis, | 110. Henry, |
| 58. Delamere, | 111. Hess, |
| 59. Delhi, | 112. Hodgetts, |
| 60. DeMorest, | 113. Hoskin, |
| 61. Denison, | 114. Howey, |
| 62. Dill, | 115. Hutt, |
| 63. Dowling, | 116. Hutton, |
| 64. Drury, | 117. Hyman, |
| 65. Dryden, | 118. Jack, |
| 66. Dunbar, | 119. Janes, |
| 67. Dundee, | 120. Jennings, |
| 68. Dunlop, | 121. Keith, |
| 69. Dunnet, | 122. Kelly, |
| 70. Ellis, | 123. Kelvin, |
| 71. Emerald, | 124. Kemp, |
| 72. Emo, | 125. Kitchener, |
| 73. English, | 126. Lackner, |
| 74. Ermatinger, | 127. Lampman, |
| 75. Fairbairn, | 128. Laura, |
| 76. Fairbank, | 129. Leask, |
| 77. Falconbridge, | 130. Leinster, |
| 78. Fawcett, | 131. Levack, |
| 79. Foster, | 132. Louise, |
| 80. Foy, | 133. Lorne, |
| 81. Fraleck, | 134. Loughrin, |
| 82. Frater, | 135. Lumsden, |
| 83. Frechette, | 136. Londonderry, |
| 84. Gallagher, | 137. Mareoni, |
| 85. Gamey, | 138. Martland, |
| 86. Garibaldi, | 139. Marshay, |
| 87. Garvey, | 140. Mason, |
| 88. Garson, | 141. Mattagami, |
| 89. Goschen, | 142. May, |
| 90. Gough, | 143. Merritt, |
| 91. Gouin, | 144. Middleboro, |
| 92. Graham, | 145. Miramichi, |
| 93. Grigg, | 146. Moffat, |
| 94. Groves, | 147. Moher, |
| 95. Haddo, | 148. Moncrieff, |
| 96. Haentschel, | 149. Mond, |
| 97. Hagar, | 150. Morgan, |
| 98. Hallam, | 151. Muldrew, |
| 99. Halliday, | 152. Munster, |

153. MacBeth,	194. Seagram,
154. Mackelcan,	195. Secord,
155. McBride,	196. Selby,
156. McConnell,	197. Selkirk,
157. McGee,	198. Semple,
158. McKim,	199. Servos,
159. McKinnon,	200. Shakespeare,
160. MacLennan,	201. Sheard,
161. McLeod,	202. Shelburne,
162. MacMurchy,	203. Shelly,
163. McNamara,	204. Sheppard,
164. McNaught,	205. Sladen,
165. McNish,	206. Snider,
166. McOwen,	207. Sothman,
167. Nairn,	208. Stetham,
168. Natal,	209. Stobie,
169. Neelon,	210. Strathearn,
170. Newton,	211. Street,
171. Noble,	212. Stull,
172. Norman,	213. Sweeny,
173. Northrup,	214. St. Louis,
174. Nursey,	215. Telfer,
175. Ogilvie,	216. Tilton,
176. Onaping,	217. Togo,
177. Parker,	218. Totten,
178. Parkin,	219. Trill,
179. Pattinson,	220. Turner,
180. Paul,	221. Tyrone,
181. Penhorwood,	222. Ulster,
182. Porter,	223. Unwin,
183. Rathbun,	224. Valin,
184. Ratter,	225. Vernon,
185. Rayside,	226. Vrooman,
186. Regan,	227. Waldie,
187. Rhodes,	228. Waters,
188. Roberts,	229. Westbrook,
189. Roblin,	230. Whalen,
190. Salter,	231. Whigham,
191. Scadding,	232. Wigle,
192. Scollard,	233. Wisner,
193. Scotia,	234. Zavitz,

and the towns of—

Chapleau,
Chelmsford,
Copper Cliff,
Massey,
Sudbury,
Timmins,
Webbwood,

together with any other territory, included within the following limits,—

Commencing at a point on the north shore of Lake Huron at the southwest angle of the township of Harrow; thence north along the west limit of the township of Harrow to the southeast angle of the township of Salter; thence west along the south limit thereof 6 miles more or less to the southwest angle of said township; thence north along the west limit thereof, 6 miles to the northwest angle of said township; thence east along the said north limit 6 miles to the northwest angle thereof; thence north along the west limit of the township of Gough and townships numbered 118, 119 and 120 a distance of 24 miles more or less to the northwest angle of township No. 120; thence east along the north limit of township No. 120, 6 miles more or less to the southwest angle of township No. 114; thence north along the west limit of townships numbered 114 and 115, 12 miles more or less to the northwest angle of township No. 115; thence continuing north along O. L. Surveyor David Beatty's meridian line, 12 miles more or less to the northeast angle of township "D" in the Mississauga Forest Reserve; thence west along the north boundaries of townships "D," "H," "L," "P," "T" 30 miles more or less to the 12th mile post on O. L. Surveyor Niven's meridian line; thence north astronomically along said meridian line 18 miles more or less to the north limit of the Mississauga Forest Reserve; thence west astronomically along said limit and said limit produced 65 miles more or less to O. L. Surveyor T. B. Speight's meridian line of 1898; thence north astronomically along said meridian line and its production north 84 miles more or less to O. L. Surveyor Niven's base line; thence east astronomically along said base line in latitude 48 degrees 27 minutes 54 seconds north to the 36th mile post on said base line, being also the northwest angle of the township of Whitesides; thence south along the westerly limit of the townships of Whitesides, Keefer, Hillary and Pharand, 24 miles more or less to the southwest angle of last mentioned township; thence east along the north limits of the townships of Crothers, McBride, Hassard, Beemer, English, and Zavitz 36 miles more or less to the northeast angle of last mentioned township; thence south astronomically along the easterly limits of the townships of Zavitz, Hutt, Halliday, Mond, Natal, MacMurehy, Fawcett, Ogilvie, Browning, 54 miles more or less to the southeast angle of the last mentioned township; thence east along the north limits of the townships of Stull, McLeod, Ellis, Parker, Selby, Sladen, $37\frac{3}{4}$ miles more or less to the northeast angle of the last mentioned township; thence southerly along the east boundaries of the townships of Sladen, Shelburne, Delhi, Armagh, Afton, Macbeth, McNish, Janes, Henry, Ratter and Dunnet, 66 miles more or less to the southeast angle of the township of Dunnet; thence west along the south limit thereof 60 chains, 68 links to the northeast angle of the township of Casimir; thence south along the east limits of the townships of Casimir, Haddo, and Martland, 18 miles more or less to

the north limit of the township of Scollard; thence east along the north limit of the said township of Scollard, 6 miles more or less to the northerly bank of the French River; thence south astronomically to the main channel of the French River or northern boundary of the district of Parry Sound; thence westerly down stream along the main channel of the said river and along the channel which runs north of the more northerly of the two islands on which the townplot of Coponaning has been laid out to the Georgian Bay; thence westerly crossing the most westerly mouth of said river to the north shore of said bay; thence westerly along the north shore of the said bay to its intersection with the east limit of the township of Humboldt; thence north along the said east limit 10 miles more or less to the north limit of said township; thence west along the north limit of said township, township of Carlyle and township numbered 10, 23 miles more or less to the water's edge of the Georgian Bay; thence westerly along the water's edge of the Georgian Bay 24 miles more or less to the place of beginning, and to include also all the islands in Lake Huron and the Georgian Bay of said lake lying between the easterly limit of the township of Humboldt and the western limit of the township of Harrow, not included in the Territorial district of Manitoulin.

The Territorial District of Sudbury shall form the Provisional Judicial District of Sudbury.

Provisional
Judicial
District of
Sudbury.

52.—THE TERRITORIAL DISTRICT OF TEMISKAMING Temiskaming.

shall consist of the Townships of—

- | | |
|------------------|-----------------|
| 1. Adams, | 23. Bernhardt, |
| 2. Alexandra, | 24. Beatty, |
| 3. Alma, | 25. Bisley, |
| 4. Argyle, | 26. Black, |
| 5. Armstrong, | 27. Blain, |
| 6. Aubin, | 28. Blount, |
| 7. Auld, | 29. Bompas, |
| 8. Aurora, | 30. Bonis, |
| 9. Banks, | 31. Bond, |
| 10. Baden, | 32. Boston, |
| 11. Bannockburn, | 33. Bowman, |
| 12. Barber, | 34. Bowyer, |
| 13. Barnet, | 35. Bradburn, |
| 14. Barr, | 36. Brethour, |
| 15. Bartlett, | 37. Brewster, |
| 16. Bayly, | 38. Brigstocke, |
| 17. Beardmore, | 39. Bristol, |
| 18. Beauchamp, | 40. Brower, |
| 19. Beck, | 41. Bryce, |
| 20. Ben Nevis, | 42. Bucke, |
| 21. Benoit, | 43. Burt, |
| 22. Berry, | 44. Byers, |

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|------------------|------------------|
| 45. Cairo, | 97. Fallon, |
| 46. Calvert, | 98. Fasken, |
| 47. Cane, | 99. Farr, |
| 48. Carman, | 100. Fauquier, |
| 49. Carnegie, | 101. Findlay, |
| 50. Carr, | 102. Firstbrook, |
| 51. Catharine, | 103. Flavell, |
| 52. Calder, | 104. Fournier, |
| 53. Casey, | 105. Fox, |
| 54. Carscallen, | 106. Fripp, |
| 55. Chamberlain, | 107. Galna, |
| 56. Charters, | 108. Gamble, |
| 57. Childerhose, | 109. Gauthier, |
| 58. Chown, | 110. Geary, |
| 59. Cleaver, | 111. Geikie, |
| 60. Clergue, | 112. German, |
| 61. Clifford, | 113. Glackmeyer, |
| 62. Clute, | 114. Godfrey, |
| 63. Cody, | 115. Gowan, |
| 64. Cole, | 116. Grenfell, |
| 65. Coleman, | 117. Gross, |
| 66. Colquhoun, | 118. Gurney, |
| 67. Cook, | 119. Guibord, |
| 68. Cote, | 120. Haggart, |
| 69. Coulson, | 121. Hanna, |
| 70. Corkill, | 122. Harley, |
| 71. Corley, | 123. Harris, |
| 72. Crawford, | 124. Haultain, |
| 73. Currie, | 125. Hearst, |
| 74. Dack, | 126. Henwood, |
| 75. Dane, | 127. Hilliard, |
| 76. Dargavel, | 128. Hillary, |
| 77. Davidson, | 129. Hincks, |
| 78. Deloro, | 130. Hislop, |
| 79. Denton, | 131. Holmes, |
| 80. Dokis, | 132. Hoyle, |
| 81. Donovan, | 133. Hudson, |
| 82. Doon, | 134. Ingram, |
| 83. Douglas, | 135. James, |
| 84. Doyle, | 136. Jamieson, |
| 85. Duff, | 137. Jessop, |
| 86. Dufferin, | 138. Katrine, |
| 87. Dundonald, | 139. Keefer, |
| 88. Dunmore, | 140. Kendrey, |
| 89. Dymond, | 141. Kennedy, |
| 90. Eby, | 142. Kerns, |
| 91. Edwards, | 143. Kerrs, |
| 92. Egan, | 144. Kidd, |
| 93. Eldorado, | 145. Kimberly, |
| 94. Elliot, | 146. Kingsmill, |
| 95. Evanturel, | 147. Kittson, |
| 96. Evelyn, | 148. Kirkland, |

- | | |
|---------------------|----------------------|
| 149. Klock, | 201. Moberly, |
| 150. Knight, | 202. Montrose, |
| 151. Knox, | 203. Moody, |
| 152. Laidlaw, | 204. Morel, |
| 153. Lamarche, | 205. Morrisette, |
| 154. Langmuir, | 206. Mortimer, |
| 155. Lawson, | 207. Mountjoy, |
| 156. Lebel, | 208. Mulligan, |
| 157. Leckie, | 209. Munro, |
| 158. Lee, | 210. Musgrove, |
| 159. Leo, | 211. Murphy, |
| 160. Leitch, | 212. Nansen, |
| 161. Leith, | 213. New Market, |
| 162. Lennox, | 214. Nesbitt, |
| 163. Leonard, | 215. Nicol, |
| 164. Little, | 216. Nixon, |
| 165. Lorrain, | 217. Nordica, |
| 166. South Lorrain, | 218. North Williams, |
| 167. Loveland, | 219. O'Brien, |
| 168. Lucas, | 220. Ogden, |
| 169. Lundy, | 221. Ossian, |
| 170. MacDiarmid, | 222. Ottaway, |
| 171. McArthur, | 223. Otto, |
| 172. McCann, | 224. Owens. |
| 173. McCart, | 225. Pacaud, |
| 174. McCool, | 226. Pearce, |
| 175. McElroy, | 227. Pense, |
| 176. McEvay, | 228. Pharand, |
| 177. McFadden, | 229. Playfair, |
| 178. McGarry, | 230. Pontiac, |
| 179. McGiffin, | 231. Powell, |
| 180. McKeown, | 232. Price, |
| 181. McNeil, | 233. Prosser, |
| 182. McVittie, | 234. Purvis, |
| 183. Mabee, | 235. Pyne, |
| 184. Machin, | 236. Rankin, |
| 185. Macklem, | 237. Ray, |
| 186. Maisonville, | 238. Raymond, |
| 187. Mahaffy, | 239. Rattray, |
| 188. Mann, | 240. Reaume, |
| 189. Marathon, | 241. Reid, |
| 190. Marquis, | 242. Reynolds, |
| 191. Marter, | 243. Rickard, |
| 192. Massey, | 244. Roadhouse, |
| 193. Matheson, | 245. Robb, |
| 194. Medina, | 246. Robertson, |
| 195. Michie, | 247. Robillard, |
| 196. Michaud, | 248. Rorke, |
| 197. Mickle, | 249. Sargeant, |
| 198. Midlothian, | 250. Savard, |
| 199. Milligan, | 251. Shackleton, |
| 200. Milner, | 252. Sharpe, |

253. Shaw,	280. Timmins,
254. Sheba,	281. Tisdale,
255. Sheraton,	282. Tolstoi,
256. Sherring,	283. Torrance,
257. Shillington,	284. Tucker,
258. Skead,	285. Tudhope,
259. Smyth,	286. Tully,
260. Speight,	287. Turnbull,
261. Steele,	288. Truax,
262. Stimson,	289. Tyrrell,
263. Stock,	290. Walker,
264. St. John,	291. Wallis,
265. Sulman,	292. Warden,
266. Swanson,	293. Wark,
267. Sweatman,	294. Wesley,
268. Sydere,	295. Whitesides,
269. Taylor,	296. Whitson,
270. Tannahill,	297. Whitney,
271. Tack,	298. Wilhelmina,
272. Teefy,	299. Wilkie,
273. Teetzel,	300. Willett,
274. Terry,	301. Williamson,
275. Thackeray,	302. Willison,
276. Trethewey,	303. Van Hise,
277. Thomas,	304. Van Nostrand,
278. Thorburn,	305. Yarrow,
279. Thorneloe,	

and the Towns of—

1. Charlton,	6. Haileybury,
2. Cobalt,	7. Latchford,
3. Cochrane,	8. Matheson,
4. Elk Lake,	9. New Liskeard,
5. Englehart,	

together with any territory included within the following limits:—

Commencing at the northeast angle of the township of Riddell in the Territorial District of Nipissing; thence north astronomically along the westerly boundary of the township of South Lorrain 12 miles to the southeast angle of the township of Lorrain; thence westerly in a straight line 12 miles more or less to the southeast angle of the township of Brigstocke; thence continuing westerly along the south boundaries of the townships of Brigstocke, Cole and Medina, 18 miles more or less to the southwest angle of the township of Medina; thence northerly along the westerly limit of the township of Medina, 6 miles more or less to the northwest angle thereof; thence westerly along the southerly limits of the townships of Rorke, McGiffin, Gamble, Corley, Leckie, and Dufferin $37\frac{3}{4}$ miles more or less to the southwest angle of the last mentioned township; thence northerly along the westerly limit of the townships of Dufferin, North

Williams, Leonard, Tyrrell, Knight, Raymond, Midlothian, Montrose and Hincks, 54 miles more or less to the northwest angle of the last mentioned township; thence westerly along the southerly boundaries of the townships of Geikie, Bartlett, Musgrove, Doyle, Childerhose and Pharand, 36 miles more or less to the southwest angle of the last mentioned township; thence northerly along the westerly limit of the townships of Pharand, Hillary, Keefer and Whitesides 24 miles more or less to the northwest angle of the last mentioned township; thence west astronomically along Ontario Land Surveyor Niven's base line in latitude 48 degrees 27 minutes 54 seconds north, 36 miles more or less to the 72nd mile post on said base line; thence north 51 miles more or less to the southwest angle of the township of Sulman; thence north along the west limits of the townships of Sulman, Owens, Williamson and Nixon, 36 miles more or less to the northwest angle of the last mentioned township; thence continuing north astronomically 140 miles more or less to the middle thread of the Albany River; thence northeasterly along the middle thread of the said River to James Bay; thence southeasterly and easterly following the shore of James Bay to the Inter-Provincial Boundary between the Provinces of Ontario and Quebec; thence southerly along the said Inter-Provincial Boundary to a point due east astronomically from the point of commencement; thence west astronomically $10\frac{1}{2}$ miles more or less to the point of commencement.

The Territorial District of Temiskaming shall form the Provisional Judicial District of Temiskaming.

53.—THE TERRITORIAL DISTRICT OF KENORA Kenora,

shall consist of the Townships of—

- | | |
|-----------------|-----------------|
| 1. Aubrey, | 14. Redditt, |
| 2. Britton, | 15. Revell, |
| 3. Burk, | 16. Rowell, |
| 4. Eton, | 17. Rugby, |
| 5. Hartman, | 18. Sandford, |
| 6. Haycock, | 19. Smellie, |
| 7. Jaffray, | 20. Southworth, |
| 8. Langton, | 21. Temple, |
| 9. Melgund, | 22. Umbach, |
| 10. Melick, | 23. Van Horne, |
| 11. Mutrie, | 24. Wainwright, |
| 12. Pellatt, | 25. Wabigoon, |
| 13. Pettypiece, | 26. Zealand, |

and the Towns of—

- | | |
|--------------|-------------------|
| 1. Dryden, | 3. Kenora, |
| 2. Keewatin, | 4. Sioux Lookout, |
- together with any other territory included within the following limits, that is to say:—

Commencing at the 48th mile post on the west boundary of the district of Thunder Bay in latitude 49 degrees 0 minutes 6 seconds north; thence due west astronomically 89 miles 71 chains 7 links, more or less, to the 18th mile post on Ontario Land Surveyor Alexander Niven's 6th meridian line; thence due north astronomically along said meridian line 6 miles to the 24th mile post thereon; thence due west astronomically 45 miles, more or less, to the east shore of Sabascong Bay of Lake of the Woods; thence westerly and southwesterly along the south shore of said bay and along the east shore of the Lake of the Woods to where the same is intersected by the 49th parallel of latitude; thence due west astronomically 15 miles, more or less, to the International boundary between the Province of Ontario and the United States of America; thence northerly and westerly along said International boundary to the boundary between the Province of Manitoba and the Province of Ontario; thence due north astronomically along said last mentioned boundary to the Winnipeg River or boundary between the Province of Ontario and the district of Keewatin; thence easterly following the division line between the said Province and the said district through the waters of the Winnipeg River, English River, Lac Seul, Root River, Lake St. Joseph, to the westerly limit of the Thunder Bay District; thence due south along said west limit to the place of beginning.

Provisional
Judicial
District of
Kenora.

The Territorial District of Kenora shall form the Provisional Judicial District of Kenora. 10 Edw. VII. c. 2, s. 2; 2 Geo. V. c. 21; c. 22; 3-4 Geo. V. c. 18, ss. 2, 3, 57.

Inclusion of
towns and
villages
although
not mentioned.

3. Notwithstanding the express mention herein of certain Towns and Villages as being included in certain Counties and Districts, every such County and District shall include any other Town or Village situate within the limits thereof. 10 Edw. VII. c. 2, s. 3.

UNITED COUNTIES, ETC.

United coun-
ties.

4.—(1) For municipal, judicial and all purposes not otherwise provided for by law, the following Counties shall continue to form Unions of Counties:—

1. Stormont, Dundas and Glengarry;
2. Leeds and Grenville;
3. Northumberland and Durham;
4. Prescott and Russell;

Cities and
towns.

Rev. Stat. c. 16.

(2) For judicial purposes every city shall, subject as to the City of Toronto to section 3 of *The Sheriffs' Act*, be united to and form part of the county within the limits whereof it is situate; but for municipal purposes such cities, and all towns and other municipalities withdrawn from the jurisdiction of the county, shall not form part of the counties in which they are respectively situate. 10 Edw. VII. c. 2, s. 4.

5. Each of such unions of counties under the name of the United Counties of and (*naming them*), shall for all purposes (except as before excepted), so long as such counties remain united, have in common, as if one county, all courts, offices and institutions established by law, pertaining to counties. 10 Edw. VII. c. 2, s. 5.

BOUNDARIES OF TOWNSHIPS LYING ON CERTAIN LAKES AND RIVERS.

6.—(1) Except as provided in subsections 2 and 3 the limits of all the townships lying on the River St. Lawrence, Lake Ontario, the River Niagara, Lake Erie, the River Detroit, Lake St. Clair, the River St. Clair, Lake Huron (not including the Georgian Bay), the River St. Mary's and Lake Superior (not including Thunder Bay, Black Bay and Nepigon Bay), shall extend to the boundary of the Province in such lake or river, in prolongation of the outlines of each township respectively; and unless herein otherwise provided, such townships shall also include all the islands, the whole or the greater part of which are comprised within the said outlines so prolonged.

(2) Subsection 1 shall not apply to that part of Ontario at the head of Lake Ontario lying west of the east boundary of the County of York produced southerly to the International boundary line, but in that part the limits of all townships on either side of the lake shall extend to a line drawn from the intersection of the east boundary of the County of York produced with the International boundary line, westerly to the old outlet of Burlington Bay.

(3) The Township of South Walsingham shall include the whole of Long Point. 10 Edw. VII. c. 2, s. 6.

7. The limits of the townships lying on the River Ottawa shall in like manner extend to the boundary between the Province of Ontario and Quebec. 10 Edw. VII. c. 2, s. 7.

8. The limits of the townships in the County of Glengarry shall in like manner extend to the middle of Lake St. Francis, and to the middle of the main channel of the River St. Lawrence, and unless herein otherwise provided, shall also include every island, the whole or the greater part of which is comprised within the outlines of such townships so prolonged. 10 Edw. VII. c. 2, s. 8.

9. The limits of the townships on the Bay of Quinté, the Georgian Bay, Thunder Bay, Black Bay and Nepigon Bay, the River Trent and its lakes, Lake Simcoe, the River Severn, the River Rideau and its lakes, the River Thames, the Grand River, and any other rivers, lakes and bays not hereinbefore

mentioned, shall in like manner extend to the middle of such lakes and bays, and to the middle of the main channels of such rivers respectively, and unless herein otherwise provided, shall also include every island, the whole or the greater part of which is comprised within the outlines of such Township so prolonged. 10 Edw. VII. c. 2, s. 9.

Saving of islands being townships of themselves, etc.

10. The last preceding four sections shall not extend to any islands or parts of islands which are townships by themselves, or which have been expressly included in other townships in the original surveys and plans thereof remaining of record in the office of the Minister of Lands, Forests and Mines or by statute, but the same shall remain townships or parts of such other townships respectively. 10 Edw. VII. c. 2, s. 10.

NEW TOWNSHIPS.

Establishment of townships and unions of townships.

11. Subject to the provisions of *The Municipal Act*, the Lieutenant-Governor in Council may, by proclamation, constitute, from a day named therein, townships and unions of townships in those parts of Ontario in which townships or unions thereof have not been constituted, and may fix the metes and boundaries thereof. 10 Edw. VII. c. 2, s. 11

CHANGING NAMES OF TOWNSHIPS.

Changing names of townships.

12.—(1) The Lieutenant-Governor in Council may change the name of any township where no Letters Patent have been issued granting lands therein.

Publication of change.

(2) The Order in Council shall forthwith be published in the *Ontario Gazette*. 10 Edw. VII. c. 2, s. 12.

STATUS OF CERTAIN OFFICERS ON ALTERATION OF BOUNDARIES.

Status of coroners and other officers upon formation of a new district or annexation.

13. Where a part of a county or of a provisional judicial district has been or shall be formed into or annexed to another district, the coroners, justices of the peace and commissioners for taking affidavits, residing in the territory so dealt with shall be the coroners, justices and commissioners for the territorial district into which the territory in which they reside is formed and to which it has been attached, by the same tenure of office and without their again taking any oath. 3 Geo. V. c. 18. s. 4.

GORES, ISLANDS, ETC.

Annexation of gores to adjacent townships.

14. The Lieutenant-Governor in Council may, by proclamation, annex any gore or tract of land not forming part of any township to any adjacent township or parts thereof to adjacent townships. 10 Edw. VII. c. 2, s. 13.

15. Where, in the application of the provisions of this Act, there is doubt as to the township in which any island or other tract of land or land covered with water lies, the Lieutenant-Governor in Council may, by proclamation, declare to what township the same belongs. 10 Edw. VII. c. 2, s. 14.

Location of
islands.

CHAPTER 4.

An Act respecting the Provisional County of Haliburton.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short Title.

1. This Act may be cited as *The Haliburton Act*.
9 Edw. VII. c. 2, s. 1.

PROVISIONAL COUNTY COUNCIL.

Rights, liabilities and powers of the provisional county corporation and council.

2. Except where herein otherwise provided the Provisional County of Haliburton and the Corporation and Council thereof shall have and possess respectively all the rights, powers, liabilities and incidents of a county, county corporation and county council; and, except where inconsistent with this Act, the law and the Statutes applicable to counties, county corporations and county councils, and the members of such councils, shall apply. 9 Edw. VII. c. 2, s. 2.

By-laws in aid of railways.

3. No by-law for granting aid to any railway company, shall be valid unless, within three months from the passing thereof, it is approved by the Lieutenant-Governor in Council. 9 Edw. VII. c. 2, s. 3.

Council, meetings of.

4. The meetings of the council shall be held at the place within the county where the registry office is kept. 9 Edw. VII. c. 2, s. 4.

ADMINISTRATION OF JUSTICE.

County to form part of Victoria for judicial purposes.

5. For judicial purposes, including the holding of courts, the officers of such courts, judicial process and proceedings, and the selection of jurors, the Provisional County shall be united to and form part of the County of Victoria. 9 Edw. VII. c. 2, s. 5.

Justices of the Peace.

6. The justices of the peace appointed for the Provisional County shall be entitled to sit in the General Sessions held for the County of Victoria. 9 Edw. VII. c. 2, s. 6.

Appeal from decisions of justices of the peace.

7. Where an appeal lies from the decision of a justice or justices of the peace to the General Sessions of the Peace, the appeal in a case arising in the Provisional

County shall lie to and may be heard and determined by the Court of General Sessions of the Peace for the County of Victoria. 9 Edw. VII. c. 2, s. 7.

8. All returns of convictions required by law to be made by a justice of the peace for the Provisional County shall be made to the clerk of the peace for the County of Victoria. 9 Edw. VII. c. 2, s. 8.

Returns of convictions.

9. The Lieutenant-Governor in Council may from time to time direct that one or more suitable gaols or lock-ups shall be provided by the Minister of Public Works, in the Provisional County out of any money appropriated for that purpose. 9 Edw. VII. c. 2, s. 9.

Erection of gaols.

10. Every gaol and lock-up erected under the authority of the Lieutenant-Governor in Council, shall be a common gaol of the Provisional County, and of the County of Victoria, for the safe custody of persons charged with the commission, within the Provisional County, of crimes, or with the commission therein of offences against any statute of Ontario, or against any municipal by-law, who may not have been finally committed for trial; and for the safe custody of such persons when finally committed for trial, until removed to the common gaol at Lindsay, and for the confinement of persons sentenced within the Provisional County for such crimes or offences, for periods not exceeding one month; and for the confinement of persons so sentenced for periods exceeding one month, until such persons can be conveniently removed to the common gaol at Lindsay, or other lawful prison to which they are sentenced. 9 Edw. VII. c. 2, s. 10.

Gaols in Haliburton to be common gaols of Haliburton and Victoria.

11. Nothing in the next preceding section shall prevent any court, or justice of the peace from directing the committal to the common gaol at Lindsay, either for safe custody, or for punishment, of any person whom it may be considered expedient to commit thereto. 9 Edw. VII. c. 2, s. 11.

Power to commit to the gaol at Lindsay.

12.—(1) The sheriff of the County of Victoria shall have authority to appoint the gaoler for the Provisional County, but the appointment and dismissal of such gaoler shall be subject to the approval of the Lieutenant-Governor.

Appointment of Gaoler.

(2) The salary of the gaoler shall be provided by the council of the Provisional County, subject to the proper proportion thereof being repaid, according to the rule governing in other counties. 9 Edw. VII. c. 2, s. 12.

Salary of Gaoler.

13. The judge of the county court of the County of Victoria shall have authority to appoint such constables as he may deem necessary for the Provisional County. 9 Edw. VII. c. 2, s. 13.

Appointment of Constables.

Contribution
by Haliburton
to expenses of
administration
of justice.

14.—(1) The Provisional County shall bear and pay to the Corporation of the County of Victoria its just share or proportion of all charges and expenses from time to time incurred in erecting, building and repairing and maintaining, enlarging or improving the court house and common gaol at Lindsay and of the proper lighting, cleansing and heating thereof, and of providing all necessary and proper accommodation, fuel, light, stationery and furniture for the gaol and courts of justice, other than the division courts and for the library of the Law Association of the county and of providing proper offices, together with fuel, light, stationery and furniture for officers connected with such courts, where the same are required to be provided by the county council, and all other charges relating to criminal justice, payable by the county in the first instance, except constables' fees and disbursements, and charges connected with coroners' inquests and such other charges as the counties are entitled to be repaid by the Province.

Application of
Municipal Act.

(2) The provisions of *The Municipal Act* with respect to the determination of the compensation to be paid by the corporation of a city or separated town to the corporation of the county in which for judicial purposes the city or town is situate shall apply to the determination of the compensation payable under this section. 9 Edw. VII. c. 2, s. 14.

APPEALS IN ASSESSMENT CASES.

To whom
appeal lies.

15.—(1) An appeal shall lie from the decision of the court of revision of any Municipality within the Provisional County to the Judge of the County Court of the County of Victoria.

Application of
Assessment
Act.

(2) The provisions of *The Assessment Act* with respect to appeals from the judge of the county court to The Ontario Railway and Municipal Board shall apply to the Provisional County. 9 Edw. VII. c. 2, s. 15.

REGISTRAR.

Registry office.

16. The registrar of deeds shall keep his office in a place to be named for that purpose in his commission, or at such other place as may be from time to time appointed by the Lieutenant-Governor in Council. 9 Edw. VII. c. 2, s. 16.

Aid to grist
mills by taking
stock or lend-
ing money.

Rev. Stat.
c. 192.

POWER OF TOWNSHIPS AND VILLAGES TO AID GRIST MILLS.

17.—(1) In addition to the powers conferred by *The Municipal Act*, the council of any township or village municipality in the Provisional County may pass by-laws for

(a) granting aid to or for promoting the establishment of a grist mill in such township or village;

(b) taking stock in any company incorporated for establishing a grist mill in such township or village; or

(c) lending money to any such company.

(2) The aid to be granted, the stock to be taken and the money to be lent under subsection 1 shall not in all exceed one-half of the actual cost of such grist mill or in any case the sum of \$3,000. Limit of aid.

(3) Notwithstanding anything in *The Municipal Act*, the vote in the affirmative of two-thirds of the electors actually voting upon any such by-law shall be necessary and sufficient to the carrying of the same. Assent of two-thirds of ratepayers voting.

(4) No such by-law shall be passed for or in respect of the establishment of a grist mill in a location less than fifteen miles from any grist mill established in the Provisional County and in operation on the 13th day of April, 1897. Restriction upon power to grant bonus.

(5) In case of a dispute as to the result of the vote on any by-law the judge of the county court of the County of Victoria shall have the powers conferred by *The Municipal Act* upon the judge of a county court with respect to a scrutiny of the votes of electors upon a by-law. Deciding disputes as to result of vote. Rev. Stat. c. 192.

(6) The petition to the Judge may be by an elector or by the council; and the proceedings for obtaining the Judge's decision shall be the same as nearly as may be as in the case of a scrutiny. Proceedings.

(7) The council of a municipality taking stock in a company under the authority of this section shall, annually, at its first meeting for the year, elect from among its members a representative of such council to the board of directors of the company, and such representative shall be entitled to sit and vote at all meetings of the board and to vote at all meetings of shareholders in respect of the stock held by the municipality which he represents. Representation of council on board of directors.

(8) Except as herein otherwise provided the provisions of *The Municipal Act* as to money by-laws and the obtaining the assent of the electors thereto shall apply. 9 Edw. VII. c. 2, s. 17. Application of Rev. Stat. c. 192.

SECTION III.

LEGISLATIVE ASSEMBLY AND ELECTIONS.

CHAPTER 5.

An Act respecting Representation of the People in
the Legislative Assembly.

HIS MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Ontario,
enacts as follows:—

Short title.

1. This Act may be cited as *The Representation Act*.
8 Edw. VII. c. 2, s. 1.

Interpretation.

2. In this Act,

Electoral
district
defined.

(a) "Electoral district" shall mean a place entitled to
return a member or members to the Assembly;

Counties,
Territorial
districts.

(b) Where counties and territorial districts are referred
to they shall, unless it is otherwise expressly provided, be
deemed to be such counties and territorial districts respec-
tively as constituted or defined by *The Territorial Division*
Act, and the cities, towns and villages herein referred to are
those mentioned in the statutes, by-laws or proclamations,
describing or defining such cities, towns or villages for
municipal purposes. 8 Edw. VII. c. 2, s. 2, *part*.

Rev. Stat.
c. 3.

Number of
members.

3. The Legislative Assembly of the Province of Ontario
shall consist of one hundred and six members. 8 Edw. VII.
c. 2, s. 5.

Representa-
tion generally.

4.—(1) The Province of Ontario shall for the purpose
of representation in the Assembly be divided into electoral
districts as enumerated and defined in or by Schedules "A"
and "B," and each of such electoral districts shall return
one member to the Assembly, except the electoral districts of
North, South, East and West Toronto.

Special pro-
visions as to
Toronto.

(2) For each of the electoral districts of the City of
Toronto, there shall be two seats in the Assembly, to be

designated respectively as seat A and seat B, and each of such districts shall be represented in the Assembly by two members, one to be elected for each seat. 8 Edw. VII. c. 2, s. 6.

5. The boundaries of electoral districts as set out in Schedules "A" and "B" hereto shall not be affected by any alteration in municipal boundaries. 8 Edw. VIII. c. 2, s. 2, *part*. Municipal
Boundaries.

6. The electors entitled to vote in any town or village, not expressly included by Schedules "A" and "B" hereto within some electoral district, and lying within the boundaries of two or more electoral districts shall be entitled to vote in the electoral district in which they would have been so entitled if such town or village had not become incorporated. 8 Edw. VII. c. 2, s. 2, *part*. Towns and
villages not
expressly
mentioned in
schedules.

7. Unless where otherwise specially provided, all augmentations or gores of townships not specially mentioned in this Act, shall be considered as forming part of the electoral district in which the principal part of such locality is situate. 8 Edw. VII. c. 2, s. 3. Augmentations
or gores of
townships.

8. The several cities which under this Act are entitled to elect a member or members to represent them respectively in the Assembly, shall not, for the purpose of representation in the Assembly, be deemed to form part of the electoral districts within the limits whereof they respectively lie. 8 Edw. VII. c. 2, s. 4. Separation
of cities.

9. Every City, Town, Village, Township or other place lying within the territorial limits of any electoral district not specially included in any other electoral district by Schedules "A" or "B" shall form part of the electoral district in which it is situate. 8 Edw. VII. c. 2, s. 7. Places not
specified.

SCHEDULE "A."

CITIES, COUNTIES AND DISTRICTS, EACH OF WHICH CONSTITUTES AN ELECTORAL DISTRICT.

- (1) THE COUNTY OF DUFFERIN.
- (2) THE COUNTY OF DUNDAS.
- (3) THE COUNTY OF GLENGARRY.
- (4) THE COUNTY OF GRENVILLE.
- (5) THE COUNTY OF HALTON.
- (6) THE CITY OF LONDON.
- (7) THE DISTRICT OF MUSKOKA.
- (8) THE DISTRICT OF PARRY SOUND.

- (9) THE COUNTY OF PEEL.
 - (10) THE COUNTY OF PRESCOTT.
 - (11) THE COUNTY OF PRINCE EDWARD.
 - (12) THE COUNTY OF STORMONT.
 - (13) THE TERRITORIAL DISTRICT OF KENORA.
 - (14) THE TERRITORIAL DISTRICT OF RAINY RIVER.
- 8 Edw. VII. c. 2, Schedule A.

SCHEDULE "B."

DIVISIONS OF CITIES, COUNTIES AND DISTRICTS INTO ELECTORAL DISTRICTS.

1. THE ELECTORAL DISTRICT OF ADDINGTON to consist of the Townships of Camden, Sheffield, Hinchinbrooke, Kaladar, Kennebec, Olden, Oso, Anglesea, Barrie, Clarendon, Palmerston, Effingham, Abinger, Miller, North Canonto, South Canonto, Ashby and Denbigh, and the village of Newburgh.
2. THE ELECTORAL DISTRICT OF ALGOMA to consist of parts of the Territorial Districts of Sudbury and Algoma, described as follows:—Commencing at the southeast angle of the Township of MacKinnon on the north shore of Lake Huron; thence due north astronomically along the east boundary of the Townships of MacKinnon, Hallam, Shakespeare, Dunlop, Bigelow and Township No. 113 to the northeast angle of the latter, a distance of 36 miles, more or less; thence due west astronomically along the north boundary of said Township No. 113, 6 miles, more or less, to the southwest angle of Township No. 114; thence due north astronomically along the west boundary of Township No. 114, and along the west boundary of Township No. 115, 12 miles, more or less, to the northwest angle thereof; thence continuing due north astronomically along O. L. S. David Beatty's meridian line 12 miles; thence due west astronomically 30 miles, more or less, to the 12th mile post on O. L. S. Niven's meridian line; thence north astronomically along said meridian line 18 miles; thence due west astronomically 66 miles, more or less, to O. L. S. Speight's meridian line; thence due south astronomically along said meridian line 30 miles, more or less, to the northwest angle of the Township of Whitman; thence due south astronomically along the west boundary of the Townships of Whitman and Chesley 10 miles 20 chains, more or less, to the north boundary of

Garden River Indian Reserve; thence due east astronomically along the north boundary of said Garden River Indian Reserve 3 miles 40 chains, more or less, to the northeast angle of said reserve; thence due south astronomically along the east boundary of said reserve 7 miles 40 chains, more or less, to the southeast angle thereof; thence due west astronomically 6 miles, more or less, to Echo River; thence down Echo River to Echo Bay of Lake George; thence southerly along the east shore of said bay and along the east shore of Lake George to Lake Huron; thence easterly along the north shore of Lake Huron to the place of beginning; and to include all islands in Lake Huron lying north of the Judicial District of Manitoulin west of the southern prolongation of the east boundary of the Township of MacKinnon; also all islands north of the international boundary between the west end of Cockburn Island and a point due west of the mouth of Echo River; including also St. Joseph Island.

3. THE ELECTORAL DISTRICT OF NORTH BRANT to consist of the Townships of South Dumfries, Burford, Onondaga, Tuscarora, the northerly portion of the Township of Brantford, consisting of all that portion of the said Township which lies on the northerly side of the Grand River, and the Town of Paris.
4. THE ELECTORAL DISTRICT OF SOUTH BRANT to consist of the Township of Oakland, the southerly portion of the Township of Brantford, consisting of all that part of the said Township not included in the electoral district of North Brant, and the City of Brantford.
5. THE ELECTORAL DISTRICT OF BROCKVILLE to consist of the Town of Brockville, the Townships of Elizabethtown, Kitley, South Elmsley, the Township called the Rear of Yonge and Escott, and the Village of Athens.
6. THE ELECTORAL DISTRICT OF CENTRE BRUCE to consist of the Townships of Greenock, Kincardine, Elderslie and Huron, the Towns of Kincardine and Chesley, and the Village of Paisley.
7. THE ELECTORAL DISTRICT OF NORTH BRUCE to consist of the Townships of St. Edmunds, Lindsay, Eastnor, Albemarle, Amabel, Arran, Saugeen and Bruce, the Towns of Wiarton and Southampton, and the Villages of Port Elgin, Tara, Tiverton and Hepworth.

8. THE ELECTORAL DISTRICT OF SOUTH BRUCE to consist of the Townships of Brant, Carriek, Culross and Kinloss, the Town of Walkerton, and the Villages of Lucknow and Teeswater.
9. THE ELECTORAL DISTRICT OF CARLETON to consist of the Townships of Fitzroy, Goulburn, Gower North, Huntley, March, Marlborough, Nepean and Tarbolton, and the Village of Richmond.
10. THE ELECTORAL DISTRICT OF EAST DURHAM to consist of the Townships of Cavan, Manvers and Hope, the Town of Port Hope, and the Village of Millbrook.
11. THE ELECTORAL DISTRICT OF WEST DURHAM to consist of the Townships of Clarke, Darlington, and Cartwright, the Town of Bowmanville, and the Village of Newcastle.
12. THE ELECTORAL DISTRICT OF EAST ELGIN to consist of the Townships of Bayham, Malahide, Yarmouth, South Dorchester, the Town of Aylmer, and the Villages of Port Stanley, Springfield and Vienna.
13. THE ELECTORAL DISTRICT OF WEST ELGIN to consist of the Townships of Southwold, Dunwich, and Aldborough, the City of St. Thomas, and the Villages of Dutton, West Lorne and Rodney.
14. THE ELECTORAL DISTRICT OF NORTH ESSEX to consist of the Townships of Anderdon, Rochester, Maidstone, Sandwich East, Sandwich West, Sandwich South and Tilbury North, the City of Windsor, the Towns of Ojibway, Sandwich and Walkerville, and the Villages of Belle River and Ford City.
15. THE ELECTORAL DISTRICT OF SOUTH ESSEX to consist of the Townships of Mersea, Gosfield North, Gosfield South, Colchester North, Colchester South, Malden, Pelee and Tilbury West, and the Towns of Amherstburg, Essex, Kingsville and Leamington.
16. THE ELECTORAL DISTRICT OF FORT WILLIAM to consist of all that portion of the Territorial District of Thunder Bay, within the hereinafter described limits, that is to say:—Commencing at a point on the International boundary between the Province of Ontario and the United States of America where the same is intersected by the boundary lines between the Territorial Districts of Thunder Bay and Rainy River,

thence north astronomically along said district boundary to the north boundary of the Province of Ontario, thence northeasterly along said northern boundary of said Province to a point in the Albany River where the same is intersected by a line drawn due north astronomically from a point which is west astronomically 2 miles and 45 chains from the northeast angle of lot 21, in the 6th concession of the Township of Ware, thence due south astronomically to said point, thence due east astronomically 2 miles, more or less, to the centre of Dog River, thence southerly down stream along the middle thread of Dog River to the north limit of the Township of Oliver, thence east astronomically along the north limit of the Township of Oliver, to the northeast angle thereof, thence south astronomically along the east limit of said Township of Oliver to the north limit of the Township of Paipoonge, thence east astronomically along the north limit of said Township of Paipoonge, and along the north limit of the Township of Neebing, to the west shore of Thunder Bay of Lake Superior, thence continuing due east astronomically 8 miles, more or less, to a point due north astronomically from the most easterly point on Pie Island in said Bay, thence due south astronomically 20 miles, more or less, to said International boundary, thence southwesterly along said International boundary to the mouth of the Pigeon River, thence, continuing westerly along said International boundary up Pigeon River to the west boundary of the Territorial District of Thunder Bay, or place of beginning.

17. THE ELECTORAL DISTRICT OF FRONTENAC to consist of the Townships of Wolfe Island, Pittsburgh, Howe Island, Storrington, Loughboro, Portland, Kingston and Bedford, and the Village of Garden Island.
18. THE ELECTORAL DISTRICT OF CENTRE GREY to consist of the Townships of Osprey, Collingwood, Artemesia, Sullivan, Euphrasia and Holland the Town of Thornbury, and the Villages of Chatsworth, Flesherton and Markdale.
19. THE ELECTORAL DISTRICT OF NORTH GREY to consist of the Townships of St. Vincent, Sydenham, Derby, Keppel and Sarawak, and the Towns of Owen Sound and Meaford and the Village of Shallow Lake.

20. THE ELECTORAL DISTRICT OF SOUTH GREY to consist of the Townships of Bentinck, Glenelg, Normanby, Proton and Egremont, the Towns of Durham and Hanover, and the Villages of Dundalk and Neustadt.
21. THE ELECTORAL DISTRICT OF HALDIMAND to consist of the Townships of Oneida, Seneca, Cayuga North, Cayuga South, Rainham, Walpole and Dunn, and the Villages of Caledonia, Cayuga, Hagersville and Jarvis.
22. THE ELECTORAL DISTRICT OF EAST HAMILTON to consist of that part of the City of Hamilton lying east of the centre line of Hughson Street and the said centre line produced southerly to the southerly limit of the said city.
23. THE ELECTORAL DISTRICT OF WEST HAMILTON to consist of that part of the City of Hamilton lying west of the centre line of Hughson Street and the said centre line produced southerly to the southerly limit of the said city.
24. THE ELECTORAL DISTRICT OF EAST HASTINGS to consist of the Townships of Thurlow, Tyendinaga, Huntingdon and Hungerford, the Town of Deseronto, and the Village of Tweed.
25. THE ELECTORAL DISTRICT OF NORTH HASTINGS to consist of the Townships of Rawdon, Elzevir, Madoc, Marmora, Lake, Tudor, Bangor, Carlow, Cashel, Dungannon, Faraday, Grimssthorpe, Herschel, Limerick, Mayo, McClure, Monteagle, Wicklow, and Wollaston, and the Villages of Madoc, Marmora, Bancroft and Stirling.
26. THE ELECTORAL DISTRICT OF WEST HASTINGS to consist of the City of Belleville, the Township of Sydney, and the Town of Trenton.
27. THE ELECTORAL DISTRICT OF NORTH HURON to consist of the Townships of Howick, Morris, Turnberry, East Wawanosh, West Wawanosh, Ashfield, the Town of Wingham, and the Villages of Blyth and Wroxeter.
28. THE ELECTORAL DISTRICT OF SOUTH HURON to consist of the Townships of Tuckersmith, Hay, Stephen, Osborne, Stanley and Goderich, and the Villages of Exeter, Hensall and Bayfield.
29. THE ELECTORAL DISTRICT OF CENTRE HURON to consist of the Townships of Grey, McKillop, Hul-

ett, Colborne, the Towns of Goderich, Seaforth and Clinton, and the Village of Brussels.

30. THE ELECTORAL DISTRICT OF EAST KENT to consist of the Townships of Zone, Camden (with the Gore thereof), Orford, Howard, and Harwich, the Towns of Bothwell, Blenheim, Dresden and Ridgetown, and the Village of Thamesville.
31. THE ELECTORAL DISTRICT OF WEST KENT to consist of the Townships of Romney, East Tilbury, Raleigh, Dover and Chatham, the City of Chatham, the town of Wallaceburg, and the Village of Tilbury.
32. THE ELECTORAL DISTRICT OF KINGSTON to consist of the City of Kingston, and the Village of Portsmouth.
33. THE ELECTORAL DISTRICT OF EAST LAMBTON to consist of the Townships of Bosanquet, Warwick, Plympton, Brooke, and Euphemia, the Town of Forest, and the Villages of Alvinston, Arkona, Thedford, Wyoming, and Watford.
34. THE ELECTORAL DISTRICT OF WEST LAMBTON to consist of the Townships of Sombra, Dawn, Moore, Enniskillen, and Sarnia, the Towns of Sarnia and Petrolia, and the Villages of Oil Springs, Point Edward and Courtwright.
35. THE ELECTORAL DISTRICT OF NORTH LANARK to consist of the Townships of Beckwith, Dalhousie, Lanark, Ramsay, Lavant, Darling, and Pakenham, the Towns of Almonte and Carleton Place, and the Village of Lanark.
36. THE ELECTORAL DISTRICT OF SOUTH LANARK to consist of the Townships of Montague, Elmsley North, Burgess North, Sherbrooke South, Sherbrooke North, Drummond, Bathurst, and the Towns of Perth and Smith's Falls.
37. THE ELECTORAL DISTRICT OF THE COUNTY OF LEEDS to consist of the Township called the Front of Leeds and Lansdowne, the Township called the Rear of Leeds and Lansdowne, the Townships of South Crosby, North Crosby, the United Townships of Bastard and South Burgess, the Township called the Front of Yonge, and the Township called the Front of Escott, the Town of Gananoque, and the Villages of Newboro and Westport.

38. THE ELECTORAL DISTRICT OF LENNOX to consist of the Townships of Richmond, Adolphustown, North Fredericksburg, South Fredericksburg, Ernesttown and Amherst Island, the Town of Napanee, and the Village of Bath.
39. THE ELECTORAL DISTRICT OF LINCOLN to consist of the Townships of Clinton, Grantham, Grimsby South, Grimsby North, Louth and Niagara, the City of St. Catharines, the Town of Niagara, and the Villages of Beamsville, Grimsby, Merriton, and Port Dalhousie.
40. THE ELECTORAL DISTRICT OF MANITOULIN to consist of the Great Manitoulin Islands, Cockburn Island and other islands in the Georgian Bay, at present forming part of the Territorial District of Manitoulin, and that portion of the present Territorial District of Manitoulin on the mainland, and part of the Territorial District of Sudbury, described as follows, that is to say: Commencing at the southeast angle of the Township of Mackinnon, on the north shore of Lake Huron, thence north astronomically along the east boundary of the Townships of Mackinnon, Hallam, Shakespeare, Dunlop and Bigelow, to the northeast angle of the latter, a distance of 30 miles, more or less, thence due east astronomically along the north boundary of the Townships of Vernon and Totten, 12 miles, more or less, to the northeast angle of the latter, thence south astronomically along the east boundary of the Townships of Totten and Hyman, 12 miles, more or less, to the southeast angle of the latter, thence east astronomically along the south boundary of the Townships of Drury, Denison, Graham and Waters, 24 miles, more or less, to the northeast angle of Township No. 69, thence due south astronomically along the east boundary of Townships numbered 39, 68 and 67, 18 miles, more or less, to the northeast angle of the Township of Humboldt, thence due west astronomically along the north boundary of the Townships of Humboldt and Carlyle and along the south boundary of Townships numbered 82 and 90 to P. L. Surveyor Salter's second meridian line, thence due south astronomically along said meridian line, one mile, more or less, to the water's edge of Lake Huron, thence westerly along the north shore of said lake to the southeast angle of the Township of Mackinnon, or place of beginning, and to include also all the

islands in Lake Huron and the Georgian Bay of said lake lying between the southeast angle of the Township of Humboldt and the southeast angle of the Township of Mackinnon, not included in the Provisional Judicial District of Manitoulin.

41. THE ELECTORAL DISTRICT OF EAST MIDDLESEX to consist of the Townships of West Nissouri, North Dorchester, Westminster and London.
42. THE ELECTORAL DISTRICT OF NORTH MIDDLESEX to consist of the Townships of McGillivray, Bidulph, Williams East, Williams West, Adelaide and Metcalfe, the Towns of Parkhill and Strathroy, and the Villages of Ailsa Craig and Lucan.
43. THE ELECTORAL DISTRICT OF WEST MIDDLESEX to consist of the Townships of Delaware, Caradoc, Mosa, Lobo, and Ekfrid, and the Villages of Glencoe, Newbury and Wardsville.
44. THE ELECTORAL DISTRICT OF MONCK to consist of the Townships of Canborough, Moulton, Sherbrooke, Caistor, Gainsborough, Pelham and Wainfleet, and the Town of Dunnville.
45. THE ELECTORAL DISTRICT OF NIPISSING to consist of the following Townships in the Territorial District of Nipissing and the County of Renfrew:—Head, Bronson, Stratton, Master, Maria, Edgar, Barron, Guthrie, Clara, Fitzgerald, White, Niven, Clancey, Dickens, Cameron, Deacon, Anglin, Dickson, Preston, Murchison, Lyell, Papineau, Boyd, Lister, Freswick, Bower, Sproule, Airy, Sabine, Calvin, Lauder, Pentland, Osler, Bishop, McLaughlin, Canisbay, Bonfield, Boulter, Wilks, Biggar, Devine, Hunter, Peck, Ferris, Chisholm, Ballantyne, Paxton, Butt, McCraney, Finlayson, Mattawan, Orlig, Phelps, Widdifield, Gooderham, part of Indian Reserve on the North shore of Lake Nipissing South of the Township of Blyth, Antoine, the unnamed Township East of the Township of French, French, Mulock, Merrick, Eddy, the unnamed Township West of Eddy, Lockhart, Stewart, Poitras, the unnamed Township West of Poitras, Garrow, Osborne, Wyse, and the two unnamed Townships to the West of Wyse, also the Townships of Blyth, Notman, Hammell, also the Towns of North Bay, Mattawa and Bonfield.
46. THE ELECTORAL DISTRICT OF NORTH NORFOLK to consist of the Townships of Middleton, Towns-

end, and Windham, the Town of Simcoe, and the Villages of Waterford and Delhi.

47. THE ELECTORAL DISTRICT OF SOUTH NORFOLK to consist of the Townships of Charlotteville, Houghton, Walsingham South, Walsingham North and Woodhouse, with the Gore thereof, and the Villages of Port Dover and Port Rowan.
48. THE ELECTORAL DISTRICT OF EAST NORTHUMBERLAND to consist of the Townships of Cramahe, Brighton, Murray, Seymour, and Percy, the Town of Campbellford, and the Villages of Brighton, Colborne and Hastings.
49. THE ELECTORAL DISTRICT OF WEST NORTHUMBERLAND to consist of the Townships of Hamilton, Haldimand, Alnwick and South Monaghan, and the Town of Cobourg.
50. THE ELECTORAL DISTRICT OF NORTH ONTARIO to consist of the Townships of Uxbridge, Brock, Scott, Thorah, Mara, and Rama, the Town of Uxbridge, and the Villages of Beaverton and Cannington.
51. THE ELECTORAL DISTRICT OF SOUTH ONTARIO to consist of the Townships of Whitby, East Whitby, Reach, Scugog and Pickering, the Towns of Whitby and Oshawa, and the Village of Port Perry.
52. THE ELECTORAL DISTRICT OF EAST OTTAWA to consist of Rideau, Ottawa, By, and St. George's Wards.
53. THE ELECTORAL DISTRICT OF WEST OTTAWA to consist of Central, Wellington, Dalhousie and Victoria Wards.
54. THE ELECTORAL DISTRICT OF NORTH OXFORD to consist of the Townships of East Nissouri, East Zorra, West Zorra, Blandford and Blenheim, the City of Woodstock, the Village of Embro, and that part of the Village of Tavistock which formerly formed part of the Township of Zorra.
55. THE ELECTORAL DISTRICT OF SOUTH OXFORD to consist of the Townships of North Oxford, West Oxford, East Oxford, North Norwich, South Norwich and Dereham, the Towns of Ingersoll and Tillsonburg, and the Village of Norwich.
56. THE ELECTORAL DISTRICT OF NORTH PERTH to consist of the Townships of Wallace, Elma, Ellice, Mornington and North Easthope, the City of Stratford, the Town of Listowel, and the Village of Milverton.

57. THE ELECTORAL DISTRICT OF SOUTH PERTH to consist of the Townships of Blanshard, Downie, South Easthope, Fullarton, Logan and Hibbert, and the Towns of Mitchell and St. Mary's, and that part of the Village of Tavistock which formerly formed part of the Township of South Easthope.
58. THE ELECTORAL DISTRICT OF EAST PETERBOROUGH to consist of the Townships of Otonabee, Douro, Asphodel, Dummer, Belmont, Methuen, Burleigh, Anstruther and Chandos, and the Villages of Havelock, Norwood and Lakefield.
59. THE ELECTORAL DISTRICT OF WEST PETERBOROUGH to consist of the Townships of North Monaghan, Smith, Ennismore, Harvey, Galway and Cavendish, and the City of Peterborough.
60. THE ELECTORAL DISTRICT OF PORT ARTHUR to consist of all that portion of the Territorial District of Thunder Bay, within the hereinafter described limits, that is to say:—Commencing at a point in Lake Superior, on the International Boundary between the Province of Ontario and the United States of America where the said International Boundary is intersected by the boundary between the Territorial Districts of Thunder Bay and Algoma, in longitude 85 degrees 20 minutes west; thence due north astronomically along said meridian line to the north boundary of the Province of Ontario in the Albany River; thence westerly up stream along the northern boundary of said Province to a point which is due north astronomically from a point which is west astronomically 2 miles 45 chains from the northeast angle of lot 21, in the 6th concession of the Township of Ware; thence due south astronomically to said point; thence due east astronomically 2 miles, more or less, to the centre of Dog River; thence southerly down stream along the middle thread of said river to the north limit of the Township of Oliver; thence east astronomically along the north limit of the Township of Oliver to the northeast angle thereof; thence south astronomically along the east limit of the said Township of Oliver to the north limit of the Township of Paipoonge; thence east astronomically along the north limit of the said Township of Paipoonge, and along the north limit of the Township of Neebing to the west shore of Thunder Bay of Lake Superior; thence continuing due east astronomically 8 miles, more or less, to a point due

north astronomically from the most easterly point of Pie Island in said Bay; thence due south astronomically 20 miles, more or less, to said International Boundary; thence northeasterly and southeasterly along said International Boundary to the place of beginning; to include also Township No. 67 at White River Station, on the Canadian Pacific Railway in the Territorial District of Algoma; also that portion of Township No. 68, lying east of the Territorial Boundary between the Districts of Algoma and Thunder Bay.

61. THE ELECTORAL DISTRICT OF NORTH RENFREW to consist of the Townships of Ross, Bromley, Westmeath, Stafford, Pembroke, Wilberforce, Alice, Petawawa, Buchanan, South Algona, North Algona, Fraser, McKay, Wylie and Rolph, the Town of Pembroke, and the Village of Cobden.
62. THE ELECTORAL DISTRICT OF SOUTH RENFREW to consist of the Townships of McNab, Bagot, Blithfield, Brougham, Horton, Admaston, Grattan, Matawachan, Griffith, Lyndoch, Raglan, Radcliffe, Brudenell, Sebastopol, Hagarty, Richards, Sherwood, Burns and Jones, the Towns of Arnprior and Renfrew, and the Villages of Eganville and Killaloe Station.
63. THE ELECTORAL DISTRICT OF RUSSELL to consist of the Townships of Cambridge, Clarence, Cumberland, Gloucester, Osgoode and Russell, the Town of Rockland and the Village of Casselman.
64. THE ELECTORAL DISTRICT OF SAULT STE. MARIE to consist of that part of the Territorial District of Sudbury, described as follows:—Commencing at the mouth of Echo River on the Garden River Indian Reserve; thence due west astronomically to the International Boundary between the Province of Ontario and the United States of America; thence northerly, westerly and northwesterly along said International Boundary to where the same is intersected by the boundary between the Territorial Districts of Sudbury and Algoma in longitude 85 degrees 20 minutes west; thence due north astronomically 70 miles, more or less, to the northwest angle of Township No. 33, Range 26, which point is 23 miles north of the North Shore of Lake Superior; thence due east astronomically along the north boundary of Townships No. 33, No. 32, No. 31, No. 30, No. 29, No. 28, No. 27 and No. 26 in Range 26, 49

miles, more or less, to the northeast angle of the latter; thence due south astronomically along the east boundary of Township No. 26 in Ranges 26 and 25, 12 miles, to the northwest angle of Township No. 25, in Range 24; thence due east astronomically along the north boundary of Townships No. 25, No. 24 and No. 40, in Range 24, 14 miles, more or less, to Ontario Land Surveyor T. B. Speight's Meridian Line; thence due south astronomically along said Meridian Line 90 miles, more or less, to the northwest angle of the Township of Whitman; thence due south astronomically along the west boundary of the Townships of Whitman and Chesley, 10 miles 20 chains, more or less, to the north boundary of Garden River Indian Reserve; thence due east astronomically along the north boundary of said Garden River Indian Reserve, 3 miles 40 chains, more or less, to the northeast angle thereof; thence due south astronomically along the east boundary of said Garden River Indian Reserve, 7 miles 40 chains, more or less to the southeast angle thereof; thence due west astronomically along the south limit thereof, 6 miles, more or less, to Echo River; thence down Echo River to Echo Bay of Lake George, to the place of beginning.

65. THE ELECTORAL DISTRICT OF CENTRE SIMCOE to consist of the Townships of Tiny, Vespra, Flos and Sunnidale, and the Town of Barrie.
66. THE ELECTORAL DISTRICT OF EAST SIMCOE to consist of the Townships of Tay, Orillia, Matchedash, Medonte and Oro, and the Towns of Orillia, Penetanguishene and Midland, and the Village of Victoria Harbour.
67. THE ELECTORAL DISTRICT OF WEST SIMCOE to consist of the Townships of Tosorontio, Essa and Nottawasaga, the Towns of Collingwood, Stayner and Alliston, and the Village of Creemore.
68. THE ELECTORAL DISTRICT OF SOUTH SIMCOE to consist of the Townships of Adjala, Tecumseth, Innisfil and West Gwillimbury, and the Villages of Beeton, Bradford and Tottenham.
69. THE ELECTORAL DISTRICT OF STURGEON FALLS to consist of the following Townships in the Territorial Districts of Nipissing and Sudbury:—Charlton, Lyman, Gladman, Kenny, Grant, Fell, McLaren, Sisk, Bertram, Springer, Field, Bastedo, Thistle, McCallum, Latchford, Caldwell, Bad-

gerow, Gibbons, McWilliams, Hobbs, Falconer, Loudon, McPherson, Kirkpatrick, Hugel, Crerar, Dana, Pardo, Scollard, Martland, Haddo, Casimir, Dunnet, Ratter, Henry, Janes, McNish, Mason, Cosby, Cherriman, Jennings, Appelby, Bigwood, Delamere, Hoskin, Hendrie, Allen, Cox, Servos, Burwash, the unsurveyed Township South of the Township of Waldie, Waldie, Laura, Secord, the unsurveyed Township South of Township No. 59, Township No. 59, Township No. 60, Tilton, also that portion of the Indian Reserve on the North shore of Lake Nipissing lying South of the Townships of Charlton and Grant, also the islands in the French River and in that portion of Lake Nipissing within the Territorial Districts of Nipissing and Sudbury, lying west of the Southerly prolongation of the west limit of the Township of Blyth, also the Towns of Sturgeon Falls and Cache Bay.

70. THE ELECTORAL DISTRICT OF SUDBURY to consist of those parts of the Judicial Districts of Sudbury and Algoma within the hereinafter described limits, that is to say:—Commencing on the south shore of James Bay where the same is intersected by the boundary line between the Territorial Districts of Nipissing and Sudbury, thence due south astronomically along said territorial boundary to the northwest angle of the Township of Creelman, thence due east astronomically along the north boundary of the said township, 6 miles, more or less, to the northeast angle thereof, thence due south astronomically along the east boundary of said township 6 miles, more or less, to the northwest angle of the Township of Parkin, thence due east astronomically along the north boundary of the Townships of Parkin, Aylmer, Mackelcan and McCarthy to the northeast angle of the latter, a distance of 25 miles, more or less, thence due south astronomically along the east boundary of the Townships of McCarthy, Kelly, Davis, Loughrin, and Hagar to the southeast angle of the latter, a distance of 30 miles, more or less, thence due west astronomically along the south boundary of the Township of Hagar, 7 miles, more or less, to the northeast angle of the Township of Hawley, thence due south astronomically along the east boundary of the Township of Hawley, 6 miles, more or less, to the southeast angle thereof, thence due west astronomically along the south boundary of the Townships of

Hawley, Cleland, Dill, Broder, Waters, Graham, Denison and Drury, a distance of 48 miles, more or less, to the southwest angle of the latter, thence due north astronomically along the west boundary of the Townships of Drury and Trill, a distance of 12 miles more or less, to the southeast angle of the Township of Ermatinger, thence due west astronomically along the south boundary of the Township of Ermatinger and Township No. 107, to the southwest angle of the latter, thence due north astronomically along the west boundary of Township No. 107 to the southeast angle of Township No. 114, thence due west astronomically along the south boundary of Township No. 114, 6 miles, more or less, to the southwest angle thereof, thence due north astronomically along the west boundary of Townships No. 114 and No. 115, 12 miles, more or less, to the northwest angle of the latter, thence continuing due north astronomically along Ontario Land Surveyor David Beatty's meridian line, 12 miles, thence due west astronomically, 30 miles, more or less, to the 12th mile post on Ontario Land Surveyor Alexander Niven's meridian line, thence north astronomically along said meridian line, 18 miles, thence due west astronomically, 56 miles, more or less, to Ontario Land Surveyor T. B. Speight's meridian line, thence due north astronomically along said meridian line, 60 miles, more or less, to the north limit of Township No. 40, thence due west astronomically along the north boundary of Townships No. 40, No. 25, and No. 24, in Range 24, 14 miles, more or less, to the southwest angle of Township No. 25, Range 25, thence due north astronomically, 12 miles, more or less, along the west limit of Township No. 25, in Ranges 25 and 26, thence due west astronomically along the north boundary of Townships No. 26, No. 27, No. 28, No. 29, No. 30, No. 31, No. 32 and No. 33, 49 miles, more or less, to the boundary between the Judicial Districts of Sudbury and Algoma, in Longitude 85 degrees 20 minutes west, thence due north astronomically along the said District boundary to the north boundary of the Province of Ontario, in the Albany River, thence down stream southeasterly and northeasterly along the northern boundary of said Province of Ontario to the place of beginning, excepting nevertheless, Township No. 67, at White River Station on the Canadian Pacific Railway, also that portion of

Township No. 68 to the west of Township No. 67, lying east of the territorial boundary between the Districts of Algoma and Thunder Bay.

71. THE ELECTORAL DISTRICT OF TEMISKAMING to consist of all those portions of the Territorial Districts of Nipissing, Sudbury and Temiskaming within the hereinafter described limits:—Commencing at a point about seven miles north from the foot of Lake Temiskaming, on the Inter-provincial boundary between the Provinces of Ontario and Quebec, where the same is intersected by the Easterly production of the North boundary of the Township of Wyse, thence due west astronomically $59\frac{3}{4}$ miles, more or less, to the Northwest angle of the Township of McNish, thence North astronomically along the East limit of the Township of McCarthy, 6 miles, more or less, to the Northeast angle thereof; thence West astronomically along the North boundary of the Townships of McCarthy, Mackelcan, Aylmer and Parkin, 25 miles more, or less, to the Northwest angle of the latter, thence North astronomically along the East limit of the Township of Creelman, 6 miles, more or less, to the Northeast angle thereof, thence West astronomically along the North limit thereof 6 miles, more or less to the northwest angle of the Township of Creelman; thence North astronomically along the meridian line to the shore of James Bay, thence Southeasterly, Easterly and Northeasterly along the South shore of said Bay to where the same is intersected by the Inter-provincial Boundary between the Provinces of Ontario and Quebec, thence South astronomically along said Inter-provincial Boundary, to the head of Lake Temiskaming, thence Southerly through Lake Temiskaming, along said Inter-provincial Boundary to the place of beginning.
72. THE ELECTORAL DISTRICT OF EAST TORONTO to consist of the present Ward No. 1 of the City of Toronto, and that part of the present Ward No. 2 lying south of the centre line of Carlton Street and east of the centre line of Sherbourne Street, and also that part of the City of Toronto known as "Toronto Island."
73. THE ELECTORAL DISTRICT OF NORTH TORONTO to consist of all that part of the City of Toronto lying north of the centre line of Carlton Street and College Street, bounded on the east by the centre line of Sumach Street and the said line

produced northerly to the north boundary of the City, and on the west by the centre line of Palmerston Avenue.

74. THE ELECTORAL DISTRICT OF SOUTH TORONTO to consist of those parts of the present Wards Nos. 2, 3, 4 and 5 of the City of Toronto lying south of the centre line of Carlton Street and College Street and bounded on the east by the centre line of Sherbourne Street, and on the west by the centre line of Palmerston Avenue and the centre line of Tecumseth Street and said centre line produced southerly to the Bay.

75. THE ELECTORAL DISTRICT OF WEST TORONTO to consist of that part of the City of Toronto lying west of the centre lines of Palmerston Avenue and Tecumseth Street and the centre line of Tecumseth Street produced southerly to the Bay, being that portion of the city not included in the other three electoral divisions.

76. THE ELECTORAL DISTRICT OF EAST VICTORIA to consist of the Townships of Emily, Fenelon, Bexley, Laxton, Digby, Longford, Somerville and Verulam, the Villages of Omemee, Fenelon Falls, Bobcaygeon and Sturgeon Point, and all the municipalities included in the Provisional County of Haliburton.

77. THE ELECTORAL DISTRICT OF WEST VICTORIA to consist of the Townships of Ops, Mariposa, Eldon, Carden and Dalton, the Town of Lindsay, and the Village of Woodville.

78. THE ELECTORAL DISTRICT OF NORTH WATERLOO to consist of the northerly portion, hereinafter described, of the Township of Waterloo, the Townships of Woolwich and Wellesley, the City of Berlin, the Town of Waterloo, and the Village of Elmira.

The said northerly portion of the Township of Waterloo shall include and consist of that part of the said Township lying within the following limits, that is to say: Commencing at the southwest angle of lot number 46 in the said Township; thence easterly along the southerly limits of the said lot, and of lots numbers 47, 48, 50, 51 and 53, and the prolongation thereof, to the middle of the Grand River; thence along the middle of the said river, against the stream, to the prolongation of the limit between lots numbers 113 and 114, and along the prolongation of the said limit,

and along the said limit between the said lots numbers 113 and 114, northerly and easterly, to the westerly limit of lot 107; thence along the westerly limit of the said lot number 107, northerly to the northerly limit thereof; thence along the northerly limits of the said lot number 107, and of lots numbers 106, 84 and 96, easterly, to the easterly boundary of the said township; thence along the easterly, northerly and westerly boundaries of the said township, in a northerly, westerly and southerly direction, respectively, to the place of beginning.

79. THE ELECTORAL DISTRICT OF SOUTH WATERLOO to consist of the southerly portion of the said Township of Waterloo, being all that part of the said Township not included in the Electoral District of North Waterloo, the Townships of North Dumfries and Wilmot, the Towns of Galt, Preston and Hespeler, and the Villages of Ayr and New Hamburg.
80. THE ELECTORAL DISTRICT OF WELLAND to consist of the Townships of Bertie, Crowland, Humberstone, Stamford, Thorold and Willoughby, the City of Niagara Falls, the Towns of Thorold and Welland, and the Villages of Bridgeburg, Chippewa, Fort Erie, Humberstone, and Port Colborne.
81. THE ELECTORAL DISTRICT OF EAST WELLINGTON to consist of the Townships of Arthur, Nichol, Erin, West Garafraxa and West Luther, the Town of Mount Forest, and the Villages of Erin, Fergus and Elora.
82. THE ELECTORAL DISTRICT OF SOUTH WELLINGTON to consist of the Townships of Guelph, Puslinch, Pilkington and Eramosa, and the City of Guelph.
83. THE ELECTORAL DISTRICT OF WEST WELLINGTON to consist of the Townships of Minto, Maryborough and Peel, the Towns of Harriston and Palmerston, and the Villages of Arthur, Clifford and Drayton.
84. THE ELECTORAL DISTRICT OF NORTH WENTWORTH to consist of the Townships of Beverly, Flamborough West, Flamborough East, the Town of Dundas, and the Village of Waterdown.
85. THE ELECTORAL DISTRICT OF SOUTH WENTWORTH to consist of the Townships of Saltfeet, Binbrook, Glanford, Barton and Ancaster.
86. THE ELECTORAL DISTRICT OF EAST YORK to consist of the Townships of Markham and Scarborough, that portion of the Township of York

lying east of Yonge Street, those parts of the City of Toronto which formerly constituted the towns of East Toronto and North Toronto, and the Villages of Markham, Richmond Hill and Stouffville.

87. THE ELECTORAL DISTRICT OF NORTH YORK to consist of the Townships of King, Whitechurch, Georgina, East Gwillimbury and North Gwillimbury, the Towns of Aurora and Newmarket, and the Villages of Holland Landing and Sutton West.
88. THE ELECTORAL DISTRICT OF WEST YORK to consist of the Townships of Etobicoke and Vaughan and that portion of the Township of York lying west of Yonge Street, that part of the City of Toronto which formerly constituted the City of West Toronto, and the Villages of Mimico, New Toronto, Weston and Woodbridge. 8 Edw. VII. c. 2, Schedule B. 3-4 Geo. V. c. 18, ss. 2, 57.
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CHAPTER 6.

An Act respecting Voters' Lists.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title. **1.** This Act may be cited as *The Ontario Voters' Lists Act*.
7 Edw. VII. c. 4, s. 1.

INTERPRETATION.

Interpretation. **2.—(1)** In this Act,—

“Judge.” (a) “Judge” shall mean judge of the county or district court for the county or district within which the municipality for which the voters' list is made lies; and

“Scrutiny.” (b) “Scrutiny” shall mean any scrutiny of the votes polled at an election within the meaning of section 76 and the next succeeding nine sections of *The Ontario Controverted Elections Act*;

Rev. Stat.
c. 10.

“Voter.” (c) “Voter” shall mean a person entitled to be a voter, or to be named in the voters' list as qualified to be a voter either at an election of a member of the Assembly within the meaning of *The Ontario Election Act*, or at any municipal election, as the case may be.

Rev. Stat.
c. 8.

Jurisdiction of
district
judges.

(2) Every Judge of a district court, within his district, shall, for the purposes of this Act, have the jurisdiction and powers of a county judge acting in his county.

Where there
are more
county judges
than one.

(3) Where there are more county or district judges than one, a junior judge may, in case of the illness or absence or at the request of the judge, perform the duties assigned by this Act to the judge.

Deputy-Judges.

(4) A deputy-judge shall not have power to deal with any matter connected with any of the lists mentioned in this Act, unless so authorized by the Lieutenant-Governor in Council.
7 Edw. VII. c. 4, s. 2.

RULES AND FORMS.

Rules.

3. The Board of County Judges may, if requested so to do by the Lieutenant-Governor, frame rules and forms of pro-

cedure for the purpose of better carrying this Act into effect, and such rules and forms shall, when approved by the Lieutenant-Governor in Council, have the same effect and force as if they formed part of this Act. 7 Edw. VII. c. 4, s. 3.

4. In carrying into effect the provisions of this Act, the forms set forth in the Schedule, or forms to the like effect, may be used. 7 Edw. VII. c. 4, s. 4. Use of forms.

APPLICATION OF PARTS I., II., AND III.

5.—(1) Part I. shall apply to townships and villages and except as varied by Part II. of this Act and by *The Manhood Suffrage Registration Act*, to cities and towns. Application of Part I.
Rev. Stat.
c. 7.

(2) Part II. shall apply to every city in which a by-law shall have been passed for taking the assessment at any time prior to the 30th day of September, and fixing separate dates for the return and final revision of the assessment rolls for each ward or subdivision of a ward, as defined in the by-law. Of Part II.

(3) Part III. shall apply to every part of Ontario not comprised in an organized municipality. 7 Edw. VII. c. 4, s. 5. Of Part III.

(4) Territory comprised in a newly organized municipality for which there is no assessment roll shall for the purposes of subsection 3 be deemed to be still a portion of Ontario not comprised in an organized municipality. 8 Edw. c. 33, s. 2. Territory without assessment roll.

PART I.

ALPHABETICAL LISTS OF VOTERS AND COPIES.

6.—(1) The clerk of each municipality shall, immediately after the final revision and correction of the assessment roll in every year, make a correct alphabetical list in three parts, Form 1, of all persons appearing by the assessment roll to be voters, prefixing to the name of each person his number upon the roll. Lists of voters in three Parts.

(2) The first of the three parts shall contain the names, in alphabetical order, of all male persons appearing by the assessment roll to be voters at both Provincial and municipal elections. First Part.

(3) The second part shall contain the names, in alphabetical order, of all other male persons, and of all widows and unmarried women appearing by the assessment roll to be voters at municipal elections, but not at Provincial elections. Second Part.

(4) The third part shall contain the names, in alphabetical order, of all other male persons, appearing by the assessment roll to be voters at Provincial but not at municipal elections. Third Part.

Entries.

(5) The name of the same person shall not be entered more than once.

Lists for polling subdivisions.

(6) Where a municipality is divided into polling subdivisions lists shall be made for each subdivision.

Where qualification is for Provincial elections.

(7) In the case of a person qualified to vote at Provincial elections the clerk shall, opposite the name of such person, in the proper column, insert the words "Manhood Franchise," or the letters "M.F."

Where qualification in respect of real property.

(8) Where the qualification of a person to be a voter at a municipal election is in respect of real property, the clerk shall, opposite the name of such person, insert, in the proper column, the number of the lot or other proper description of the parcel of real property in respect of which such person is so qualified; adding thereto where the person is so qualified in respect of more than one lot or parcel, the words "and other premises."

Farmer's son.

(9) In the case of a person being a farmer's son, the clerk shall insert opposite his name, in the proper column, the words "Farmer's Son," or the letters "F.S."

Entry of occupation in list.

(10) In a township, town or village the clerk shall, opposite the name of each person, state his occupation in a column for that purpose.

Entry where voter assessed in several divisions of same ward.

(11) Where a ward is divided into polling subdivisions, and it appears by the assessment roll that a person is assessed in each of two or more polling subdivisions for property sufficient to entitle him to be a voter at a municipal election, the clerk shall enter his name in the list for one subdivision only, and shall insert opposite his name the words "and other premises;" and where to the knowledge of the clerk the person resides in one of the subdivisions, his name shall be entered on the list for that subdivision.

Provision where property partly in one subdivision and partly in another.

(12) Where it appears by the assessment roll that a person is assessed for property within the municipality sufficient to entitle him to be a voter at a municipal election, but that the property lies partly within one subdivision and partly within another or others, the clerk shall enter the name of such person on the list of voters in only one of the subdivisions in which the property is situate, with the following words added: "Partly qualified in subdivision No. ."

Income qualification.

(13) If the qualification to be a voter at a municipal election is in respect of income, the clerk shall, in the proper column, state that fact and the place at which the voter resides in the municipality.

Entry in list of person assessed as freeholder or tenant.

(14) Where the word "Freeholder" or the letter "F," or the word "Tenant," or the letter "T" appears in the assessment roll opposite the name of a person entitled to be entered on the list, such word or letter shall be placed opposite the name of such person.

(15) No person shall be entered on a voters' list for a city by virtue of a qualification under *The Ontario Election Act* unless he is entitled to vote also at municipal elections and no list of persons entitled to vote at Provincial elections only shall be prepared for a city or town to which *The Manhood Suffrage Registration Act* applies.

Who not to be entered.

Rev. Stat. c. 7.

(16) Where no appeal is made from the court of revision of the municipality to the Judge as provided by *The Assessment Act*, the assessment roll shall be deemed to be finally revised and corrected when the time within which an appeal may be made has elapsed, and where an appeal is made, when the assessment roll has been revised and corrected by the Judge. 7 Edw. VII. c. 4, s. 6.

When assessment roll to be regarded as finally revised.
Rev. Stat. c. 195.

7.—(1) In the case of a city or town in which the assessment roll is not returnable before the 30th day of September, the clerk, immediately after the return of the roll, and without waiting for the revision and correction thereof by the court of revision or the Judge, shall make out an alphabetical list of all persons appearing by the roll to be voters; and shall within thirty days after the return of the roll, cause two hundred copies of the list in the case of a city and one hundred copies in the case of a town to be printed in pamphlet form, and shall post up and deliver copies of the list, as provided by section 9.

Preparing voters' list in cities where roll not returnable before 30th September.

Copies.

(2) A larger number of copies may be printed if the council shall so direct.

Idem.

(3) The alphabetical list so made shall be deemed the list of voters which is subject to revision by the Judge, under section 14, and the provisions of this Act which have reference to the alphabetical list mentioned in the said section shall apply to the list provided for by this section.

Revision of list by county judge.

(4) The time for giving notice of any complaint to be made to the Judge under section 14 with respect to a list prepared under this section shall be thirty days after the clerk has posted up the list.

Time for giving notice of complaints.

(5) The list prepared under this section shall be finally revised, corrected and certified by the Judge within one month after the last day for making complaints.

Time for final completion of lists.

(6) In case the assessment roll of a city or town to which this section applies is not finally revised before the time limited for the final revision, correction and certifying of the list by the Judge, and upon appeal from the court of revision alterations are made by the Judge in the assessment roll affecting the right of any person to be entered on the list, the Judge shall forthwith, after the final revision of the roll, make out a list of such alterations and deliver the same to the clerk, who shall make corresponding changes in the certified copies of the revised list, and the Judge shall initial the same.

Correction in voters' list after revision of roll.

Posting list
of alterations.

(7) A copy of the list of alterations shall be posted up by the clerk in his office. 7 Edw. VII. c. 4, s. 7.

Entry of
P. O. address
of voter.

8.—(1) The clerk of every township municipality, in making out the list shall insert therein a schedule, Form 1, containing the name, numbered consecutively, of every post office which by the assessment roll appears as the address of any person entered on the list, and in making out the list shall, according to the form and in the proper column therefor, insert opposite the name of every voter entered on the list the consecutive number which according to the schedule is his post office address, so far as the address appears by the assessment roll, or is within the knowledge or belief of the clerk; but no appeal or complaint on the ground of any error, mistake or omission in or from the list in respect of any matter or thing by this section directed to be inserted therein, shall be made or allowed by or under this Act. 7 Edw. VII. c. 4, s. 8.

Entries of
those qualified
as jurors.

(2) The clerk in making out the voters' list shall in a separate column provided for the purpose, write or mark the letter "J" upon the voters' list opposite the names of every male person over twenty-one and under sixty years of age, who by the roll appears to possess the property qualifications required to qualify him to serve as a juror, and such voters' list shall show at or near the end thereof the aggregate number of names of persons upon such lists qualified to serve on juries, and in the case of cities and towns such list shall give the same information for each ward. 9 Edw. VII. c. 26, s. 6 (3).

Printing and
distribution
of list.

9.—(1) Immediately after the clerk has made the alphabetical list, and within forty days in a city and in other municipalities within thirty days, after the final revision and correction of the assessment roll, the clerk shall cause at least two hundred copies of the list to be printed in pamphlet form, and forthwith shall cause one of the printed copies to be posted up, and to be kept posted up in some conspicuous place in his office, and deliver or transmit by post, by registered letter, or by parcel post, registered, three copies to each judge of the county or district court of the county or district to which for judicial purposes the municipality belongs; and two copies to each of the following persons:—

Posting up.

- (a) every member of the municipal council of the municipality except the head thereof;
- (b) the treasurer thereof;
- (c) the sheriff;
- (d) the clerk of the peace;
- (e) every postmaster in the municipality;
- (f) every head teacher of a public or separate school in the municipality,
- (g) the clerk of the council of the county in which the municipality is situate,

- (i) The copies required to be sent to every head teacher of a public or separate school may be sent by the clerk to the secretary or secretary-treasurer of the school board by which such teacher is employed;

- (h) the registrar of deeds. 7 Edw. VII. c. 4, s. 9 (1); 2 Geo. V. c. 4, s. 1 (1-2).

(2) The clerk shall forthwith also deliver or transmit by post, by registered letter, or by parcel post, registered, ten copies of the list to each of the following persons:—

- (a) the Member of the House of Commons for the electoral district in which the municipality or any part thereof lies;
- (b) the Member of the Assembly for the electoral district in which the municipality or any part thereof lies;
- (c) every candidate for whom votes were given at the then last election of a member for the House of Commons and for the Assembly respectively for the electoral district in which the municipality or any part thereof lies, and
- (d) the head of the municipality. 7 Edw. VII. c. 4, s. 9 (2); 9 Edw. VII. c. 26, s. 6 (4); 2 Geo. V. c. 4, s. 1 (3).

10.—(1) The clerk shall keep a book in which he shall enter particulars showing the day on which the copies of the alphabetical list were posted up by him and were transmitted to each of the persons mentioned in section 9, and also whether such copies were delivered personally or transmitted by post and shall verify such particulars by an affidavit or statutory declaration entered in such book.

(2) A clerk who fails to comply with the provisions of this section or of section 9 shall, for each omission, incur a penalty of \$200, and in default of payment thereof shall further be liable to imprisonment for a period not exceeding three months. 7 Edw. VII. c. 4, s. 10.

11.—(1) Upon each of the copies so sent there shall be a certificate, Form 2, over the name of the clerk, stating that the list is a correct list of all persons appearing by the last revised assessment roll to be voters at Provincial elections, and at municipal elections; and, calling upon all voters to examine the list, and to make immediate proceedings to have omissions or errors corrected according to law.

(2) Upon the outside or cover of each of the copies so sent shall be printed or written conspicuously the date of the posting up of the list thus:—

This list was posted up in the Clerk's office on the day of (fill in date), 19

7 Edw. VII. c. 4, s. 11.

Posting up
by sheriffs.

12.—(1) The sheriff shall immediately upon the receipt of his copies cause one of them to be posted up in a conspicuous place in the court house; the clerk of the peace, upon receipt of his copies, shall cause one of them to be posted up in a conspicuous place in his office; every head teacher of a public or separate school shall post up one copy on the door of the school-house; and every postmaster shall post up one copy in his post-office. 7 Edw. VII. c. 4, s. 12.

Duty of
secretary-
treasurer as
to posting up
list.

(2) Where copies of the list have been sent to the secretary or secretary-treasurer of a school board instead of to the head teacher of a public or separate school, such secretary or secretary-treasurer shall act in place of the head teacher, and shall post up one copy of the list on the door of every school house under the control of the board. 2 Geo. V. c. 4, s. 2.

Notice of
transmission
and posting
up of list.

13. The clerk shall also forthwith cause to be inserted at least once in a newspaper published in the municipality, or in case none is published therein, then in a newspaper published either in the nearest municipality in which one is published, or in the county or district town, a notice, Form 3, signed by him, which shall state that he has delivered or transmitted the copies of the list as directed by this Act, and the date of the first posting up of the list in his office. 7 Edw. VII. c. 4, s. 13.

REVISION OF LISTS.

Revision of
list by
Judge.

14.—(1) The list shall be subject to revision by the Judge, at the instance of any voter who complains that the names of voters have been omitted from the list, or wrongly stated therein, or that the names of persons who are not entitled to be voters have been entered on the list.

Assessment
roll not con-
clusive.

(2) Upon such revision the finally revised assessment roll shall not be conclusive evidence in regard to any matter.

Idem.

(3) Upon such revision no person shall be disentitled to have his name entered on the list by reason of his having omitted to make, sign or deliver any statement or affidavit required by *The Assessment Act*, or of his name not having been entered on the assessment roll.

Rev. Stat.
c. 195.

Judge's deci-
sion final.

(4) The decision of the Judge, in regard to the right of any person to vote, or as to the right to enter on or strike from the list the name of any person as a voter, shall be final. 7 Edw. VII. c. 4, s. 14 (1-4); 8 Edw. VII. c. 33, s. 3 (1).

When evidence
by affidavit
receivable.

(5) In the case of a list for a town, village or township, the Judge shall receive as evidence in support of an application to have the name of a person entered on the list, the affidavit of such person or of some other person who has, and deposes that he has, personal knowledge of the matter set forth in the affidavit, Form 4, if the affidavit is made not

earlier than the tenth day next preceding the last day for making complaints to the Judge and is delivered to the clerk before the time for making complaints has expired. 8 Edw. VII. c. 33, s. 3 (2); 1 Geo. V. c. 2, s. 4.

15.—(1) Any voter whose name is entered on or who is entitled to have his name entered on the list for any municipality in the electoral district shall have the right for all purposes of this Act, upon giving notice in writing, Form 5, within thirty days after the clerk has posted up the list in his office, to apply, complain or appeal to have his own name or the name of any other person corrected in, entered on or removed from the list for any municipality in the electoral district. 7 Edw. VII. c. 4, s. 15 (1); 8 Edw. VII. c. 33, s. 4 (1). Who may appeal or complain.

(2) A person who has acquired the qualification entitling him to vote at a provincial or municipal election before the time for giving the notice of appeal to the Judge has expired, shall be deemed to be a person entitled to be entered on the list, and in the case of a municipal voter, if entered thereon, he shall be entered also on the assessment roll, and shall be assessed for his property or income, if not already assessed therefor, without any request on his part, and the Judge and clerk shall for the purposes of such assessment have the powers and perform the duties mentioned in section 41. 7 Edw. VII. c. 4, s. 15 (2). Persons who have acquired qualification before time for giving notice has expired.

(3) A person whose name is entered on any part of the list and has before the time for giving notice of appeal to the judge has expired, ceased to possess the qualification in respect of which his name was so entered, on complaint being duly made under section 17, shall be deemed to be wrongfully entered on the list, and, subject to the provisions of section 19, his name shall be removed therefrom. 1 Geo. V. c. 2, s. 1. Complaint that person named on list has lost qualification.

16. The Judge may, without a previous notice of appeal or complaint, on an application made by or on behalf of any person entered on the list, correct any mistake which shall appear to have been made in compiling the list in respect of the name, place of abode, qualification, or of the local or other description of the property, of a person entered on the list, and with respect to whose right to be so entered an appeal or complaint is pending before the Judge. 7 Edw. VII. c. 4, s. 16. Powers of Judge.

17.—(1) A voter making a complaint in respect of the list shall, within thirty days after the clerk has posted up the list in his office, give to the clerk or leave for him at his residence or place of business, notice in writing, Form 5, of his complaint. 7 Edw. VII. c. 4, s. 17 (1); 1 Geo. V. c. 2, s. 2. Proceedings on complaint of errors in list.

Vacancy in
office of clerk.

(2) If the office of clerk is vacant, the notice may be given in like manner to the head of the council of the municipality, and he shall perform all the duties of the clerk.

Procedure as
in appeal from
court of
revision.

(3) The proceedings thereafter by the Judge, clerk and the parties respectively, and the powers and duties of the Judge, clerk and other persons, shall be the same, as nearly as may be, as in the case of an appeal from the court of revision under *The Assessment Act*; but no deposits shall be required. (See Forms 5-11.)

Rev. Stat.
c. 195.

Notice of hold-
ing court for
complaints.

(4) The Judge shall not proceed with the holding of any court for hearing complaints until notice, Form 9, of the time and place of holding the court shall have been published by the clerk at least ten days before the sittings of the court. in some newspaper published in the municipality, or, if there be no such paper, then in a newspaper published in the nearest municipality in which one is published, or in the county town. 7 Edw. VII. c. 4, s. 17 (2-4).

Distribution
of list of
appeals.

(5) The clerk shall forthwith after posting up the list of appeals in his office, deliver or transmit by post, by registered letter, or by parcel post registered, one copy of the list to each of the persons described in subsection 2 of section 9. 1 Geo. V. c. 2, s. 3.

Compelling
attendance of
witnesses.

18.—(1) Any person may obtain from the county or district court of the county or district a subpoena, Form 12, or from the Judge an order, requiring the attendance at the court for hearing complaints, at the time mentioned in the subpoena or order, of a witness residing or served with the subpoena, or order, in any part of Ontario, and requiring the witness to produce any papers or documents mentioned in the subpoena or order; and every witness served with the subpoena or order shall obey the same, provided his expenses, according to the scale allowed in division courts, are paid or tendered to him at the time of service.

Compelling
attendance of
persons whose
right is in
question.

(2) Any person in respect of the entry or omission of whose name a complaint is made, shall, if resident within the municipality for or in which the court is held, upon being served with a subpoena or order obey the same without being tendered or paid his expenses; and the subpoena or order shall be deemed to have been sufficiently served:—

(a) if the subpoena or order is served upon him personally; or

(b) where he has a known residence or place of business within the municipality, if a copy of the subpoena or order is left for him with some grown-up person, at such residence or place of business; or

(c) where he has no known residence or place of business within the municipality, if a copy of the sub-

poena or order, at least six days before the sitting of the court, is mailed to him, by registered letter, directed to him at the post-office address contained in any affirmation made by him under *The Assessment Act*, and where no such affirmation has been made, directed to him at his last known post-office address, and also by separate registered letter directed to the post office nearest to the polling subdivision in which he is entered, unless such last-mentioned post-office is his last known post-office address; or

Rev. Stat.
c. 195.

(d) where he is a farmer's son, if a copy of the order or subpoena is left for him with some person at the residence of the farmer whose son he is.

(3) If a person, whose right to be a voter is the subject of enquiry, does not attend in obedience to the subpoena or order, the Judge, in the absence of satisfactory excuse being shown for the non-attendance, or of proof of right of the person to be a voter, may, on the ground of his non-attendance, strike his name off, or refuse to enter his name on the list or impose on him a fine not exceeding \$20, or may do both.

Penalty for
non-attend-
ance.

(4) The fact that the name of the person is entered on the last revised voters' list of the electoral district shall be *prima facie* evidence that he is a British subject and twenty-one years of age.

Prima facie
evidence
of certain facts.

(5) The names of any number of witnesses may be inserted in one subpoena or order. 7 Edw. VII. c. 4, s. 18.

Number of
names.

19. If on complaint or appeal to strike off the name of any person on the list it appears that the qualification of such person is incorrectly set forth therein, but that he has the qualification necessary to entitle his name to be entered on the list, the Judge shall not strike off the name of such person, but shall make such alterations in the list as are necessary to set forth the proper qualification of such person, and in so doing may, if the name has not been entered on the proper part of the list, enter the same thereon. 7 Edw. VII. c. 4, s. 19.

When
qualification
incorrectly
stated.

20. The Judge shall so arrange and proceed, and fix the sittings of the court, that all the complaints shall be heard and determined, and the list finally revised, corrected and certified, within two months from the last day for making complaints. 7 Edw. VII. c. 4, s. 20.

Time within
which list to
be revised.

21.—(1) If no complaint is made within thirty days after the clerk has posted up the list in his office, he shall forthwith deliver either in person or by letter to the Judge his report, Form 13, and the Judge shall thereupon certify, Form 14, a sufficient number of copies of the list as being the last revised list of voters for the municipality to furnish

Certifying
list by
Judge when
no complaint
made.

one copy of such list to each of the following persons, namely:

- (a) the Judge;
- (b) the clerk of the peace;
- (c) the clerk of the municipality;
- (d) the Member of the House of Commons for the electoral district in which the municipality or any part thereof lies;
- (e) the Member of the Assembly for the electoral district in which the municipality or any part thereof lies; and
- (f) every candidate for whom votes were given at the then last election of a member for the House of Commons and the Assembly respectively for the electoral district in which the municipality or any part thereof lies.

Certificate of Judge.

(2) The judge shall certify each of such copies and shall retain one and shall deliver or transmit by registered post, one copy to each of the persons mentioned in clauses (b), (c), (d), (e) and (f) of subsection 1. 1 Geo. V. c. 2, s. 5, *part*.

Statement of changes made by Judge.

22.—(1) If any complaint is made and allowed by the Judge, he shall immediately after the list has been finally revised, furnish to the clerk a statement of the changes made by him in the list.

Delivery of copies of revised list.

(2) The clerk shall thereupon prepare a sufficient number of copies of the list as revised by the Judge to furnish one copy for each of the persons mentioned in clauses (b), (c), (d), (e) and (f) of subsection 1 of section 21, and shall within one week after the revision has been made transmit or deliver such copies to the Judge.

Certificate of Judge on copies.

(3) The Judge shall thereupon sign and certify, Form 15, such copies and deal therewith in the manner provided by subsection 2 of section 21. 1 Geo. V. c. 2, s. 5, *part*.

Striking off names of persons dying after revision.

23.—(1) After the list has been certified and before the nomination day at any election, the Judge may, upon the application of a voter, strike from the list the name of any person who has died since the list was certified; and for that purpose the certificate of the Registrar-General or of the division registrar shall be sufficient evidence of death, but if the identity of the person proved to be dead with the person whose name is sought to be struck off is disputed or open to reasonable doubt, proof of the identity shall be required.

Procedure.

(2) The proceedings shall be the same as nearly as may be as those which are prescribed for the revision of the list,

except that it shall not be necessary to publish notice of the sittings of the court, and the Judge and the officers named in this Act shall have the same jurisdiction as in the case of proceedings to revise the list under this Act. 7 Edw. VII. c. 4, s. 23.

24. The certified list shall, under *The Ontario Election Act*, or *The Municipal Act*, be final and conclusive evidence that all persons named therein, and no others, were qualified to vote at any election at which such list was, or was the proper list to be used; except Effect of certified list.

1. Persons guilty of corrupt practices at or in respect of the election in question, or since the list was certified by the Judge; Exceptions.

2. Persons who, subsequently to the list being certified, are not or have not been resident within the municipality to which the list relates, or within the electoral district for which the election is held, and who by reason thereof are, under the provisions of *The Ontario Election Act*, or *The Municipal Act*, disentitled to vote; Rev. Stat. c. 8, 192.

3. Persons who, under sections 12 to 15 of *The Ontario Election Act* are disqualified and incompetent to vote. 7 Edw. VII. c. 4, s. 24; 2 Geo. V. c. 4, s. 3. Rev. Stat. c. 8.

25.—(1) The corporation of the municipality within which a court is to be held shall provide a suitable and convenient place, properly furnished, heated and lighted, for the holding of the court, and in default thereof the Judge may hold the court at such place in the county or district as he may deem proper; and if the court is held elsewhere than in the court house of the county or district, the occupant of the building in which it is held may recover from the corporation the sum of \$5 for each day on which the building was used for the purposes of the court. Duty of municipality to provide room.

(2) Every court held in the county or district town shall be held in the court house, or in such other place as the Judge may deem proper. 7 Edw. VII. c. 4, s. 25. Courts in county towns.

26. In all proceedings before the Judge he shall have all the powers which belong to or might be exercised by him in the county court. 7 Edw. VII. c. 4, s. 26. Powers of Judge.

27. The clerk of every municipality shall be subject to the summary jurisdiction and control of the Judge in the performance of his duty under this Act, in the same manner as an officer of the county court is to the court. 7 Edw. VII. c. 4, s. 27. Clerk.

28. The clerk shall be entitled to the actual and reasonable disbursements necessarily incurred by him in the discharge of the duties imposed upon him by this Act, and shall also be entitled to the following compensation:— Remuneration of clerk for services in connection with complaints.

1. Two cents for the name of every person entered in the list of complaints;
2. Two cents for every name entered in any necessary copy of the list of complaints;
3. Two cents for every name entered or other correction made by the Judge in the voters' list, and in every copy of the list as revised.
4. Two cents for every name in the statement of changes made by the Judge in the list;
5. Eight cents for every necessary notice to any party complaining or complained against;
6. Five cents for every mile necessarily and actually travelled by him in effecting service of a notice of appeal or complaint;
7. Three dollars for every day's attendance at the sittings of the court. 2 Geo. V. c. 4, s. 4.

Appointment
of constable.

29.—(1) The Judge shall have power to appoint a proper person to attend as constable at the sitting of the court; and the duties and powers of such person shall be as nearly as may be the same as those of a bailiff at a sitting of a division court.

Constable's
fees.

(2) The person acting as constable shall be entitled to the following compensation; that is to say:—

1. For every day's attendance, two dollars.
2. For every service of any process or notice, including the receipt and return thereof, and all other duties connected therewith when allowed by the Judge, a sum not exceeding ten cents per mile one way for each mile actually and necessarily travelled to effect such service. 7 Edw. VII. c. 4, s. 29.

Payment of
fees.

30. The compensation to which the clerk and constable are respectively entitled shall be certified by the Judge and paid to the clerk and constable respectively by the treasurer of the municipality upon the production and deposit with him of the Judge's certificate. 7 Edw. VII. c. 4, s. 30.

Report by
Judge as to
frauds, etc.

31. If the Judge who holds the court is of opinion that any person has contravened section 46 or section 47 of this Act, or that frauds in respect to the assessment or the list have prevailed extensively in the municipality, he shall report the same to the Attorney-General, with particulars as to names and facts. 7 Edw. VII. c. 4, s. 31.

Amendments.

32. The Judge may amend any notice or other proceeding upon such terms as he may think proper. 7 Edw. VII. c. 4, s. 32.

33. If an appellant or complainant dies or abandons his appeal or complaint, or is found not to be entitled to be an appellant, the Judge may, in his discretion, allow any other person who might have been an appellant or complainant to intervene and prosecute the appeal or complaint, upon such terms as the Judge may think just. 7 Edw. VII. c. 4, s. 33; 8 Edw. VII. c. 33, s. 6.

Substitution
of new appel-
lant.

34.—(1) If errors are found in the voters' list on the revision thereof, in the omission of names, the inaccurate entry of names, or the entry of names of persons not entitled to vote, and it appears to the Judge that the assessor or clerk was blamable for any of the errors, the Judge may order, Form 16, the assessor or clerk respectively, to pay all costs occasioned by such errors.

Costs occa-
sioned by
errors.

(2) In case of errors for which the court of revision is blamable, the Judge may order the municipality to pay the costs occasioned by such errors.

Order for
payment of
municipality.

(3) In all cases not herein provided for, the costs shall be in the discretion of the Judge. 7 Edw. VII. c. 4, s. 34.

Discretion of
Judge.

35. The costs to be allowed on any proceeding under this Act shall be according to the lowest scale of costs in an action in a division court. 7 Edw. VII. c. 4, s. 35.

Scale of costs.

36. An unsuccessful appellant or complainant shall be liable to pay the witness fees only, unless, in the opinion of the Judge, the complaint or appeal is frivolous or vexatious, or has not been made in good faith, when the Judge may order the appellant or complainant to pay in addition any other costs allowed by section 35. 7 Edw. VII. c. 4, s. 36.

Liability of
appellant for
costs.

37. Payment of costs may be enforced by an execution Form 17, against goods and chattels, to be issued from the division court of the division within which the municipality or part thereof is situate, upon filing therein the order of the Judge, and an affidavit showing the amount at which the costs have been allowed and the non-payment thereof. 7 Edw. VII. c. 4, s. 37.

Enforcing
payment of
costs.

38. No affidavit or declaration which is sworn or acknowledged before a candidate for the Assembly, shall be used upon the revision of a voters' list. 7 Edw. VII. c. 4, s. 38.

Irregular
affidavits.

REFERENCE TO DIVISIONAL COURT.

39.—(1) In order to facilitate uniformity of decision without the delay and expense of appeals,

Stating case
for opinion of
Divisional
Court.

(a) A Judge may state a case on any question arising or likely to arise, and may transmit the same to the Lieutenant-Governor in Council, who may im-

mediately refer the case to a Divisional Court for the opinion of the Court; or

- (b) The Lieutenant-Governor in Council may state a case on any such question to a Divisional Court for a like opinion. 7 Edw. VII. c. 4, s. 39 (1); 8 Edw. VII. c. 33, s. 7.

Fixing time and place of hearing argument.

(2) Immediately upon the receipt of the case it shall be the duty of the Court to appoint a time and place for hearing argument, of which written notice shall be given by the Registrar of the Appellate Division posting up a copy of the notice in the Central Office at Osgoode Hall, in Toronto, at least ten clear days before the time appointed.

Hearing.

(3) At the time appointed the Court shall hear argument by such of the counsel present as the Court may think fit to hear and shall certify to the Lieutenant-Governor in Council the opinion of the Court thereon, and the opinion shall forthwith be published in the *Ontario Gazette*, and a copy of the opinion shall forthwith be sent to the Judge of every county and district court. 7 Edw. VII. c. 4, s. 39 (2), (3).

Opinion at instance of voter.

40. A Divisional Court may also give an opinion on any question at the instance of any voter, if the Court sees fit; and the proceedings with respect thereto shall be, as nearly as may be, the same as upon a case referred; but the Court or a Judge thereof may require a deposit of money to cover the costs of hearing the question argued by counsel, and may require notice of the proceedings, or any of them, to be given to such person as the Court or Judge may direct. 7 Edw. VII. c. 4, s. 40.

LIABILITY FOR TAXES OF PERSONS WHOSE NAMES ARE ADDED.

Liability of persons whose names are added to roll on revision.

Rev. Stat. c. 195.

41. If any person who is found entitled to be a voter at municipal elections is not assessed, or is insufficiently assessed, the Judge shall enter the name of such person on the roll together with the other particulars required by *The Assessment Act* to be set opposite the name of the person assessed, including the value of the property or income in respect of which the assessment is made, which shall be determined by the Judge, and corresponding corrections shall be made by the clerk in the collector's roll. 7 Edw. VII. c. 4, s. 41.

FAILURE OF CLERK TO PERFORM HIS DUTIES.

Lists not vitiated by failure of clerk to perform duties.

42. The non-performance by the clerk of any of his duties under this Act within the times appointed shall not affect the validity of any list. 7 Edw. VII. c. 4, s. 42.

Summary application if clerk fails to perform his duties.

43.—(1) In case the clerk fails to perform any of his duties, the clerk of the peace shall forthwith apply summarily, Form 18, to the Judge to enforce the performance of the same.

(2) The application may also be made by any voter.

Application
by voter.

(3) The Judge shall require, Form 19, the clerk and any other person he sees fit to appear before him and produce the assessment roll, and any documents relating thereto, or to the list, and to submit to examination on oath, and may thereupon make such order and give such directions as he may deem proper.

Proceedings
by Judge.

(4) The clerk shall pay the costs of the proceedings, unless on special grounds the Judge shall otherwise order, in which case the Judge may direct how and by whom the costs shall be paid.

Liability of
clerk for costs.

(5) The proceedings and order of the Judge shall not relieve the clerk from the penalty hereinafter imposed. 7 Edw. VII. c. 4, s. 43.

Clerk's
liability to
penalty.

44. If the clerk omits, neglects or refuses to perform any of the duties hereinbefore required of him, for such omission, neglect or refusal, he shall incur a penalty of \$200. 7 Edw. VII. c. 4, s. 44.

Penalty for
neglect of du-
ties by clerk.

45. The wilful alteration of, omission from, incorrect entry in, or falsification of a certified list or copy thereof shall be an offence; and any clerk of a municipality, clerk of the peace or other person who commits such offence, or wilfully permits the same to be committed, shall incur a penalty of \$2,000. 7 Edw. VII. c. 4, s. 45.

Penalty for
wilfully falsi-
fying lists.

COLOURABLE TRANSFER OF PROPERTY.

46.—(1) No person shall be a party to any instrument, or to any verbal arrangement, whereby a colourable qualification is conferred or sought to be conferred upon himself or any other person in order to enable him to become a voter.

Colourable
transfer of
property in
order to confer
vote.

(2) Any person violating the provisions of this section, besides being liable to any other penalty prescribed in that behalf, shall incur a penalty of \$100.

Penalty.

(3) Any person who induces or attempts to induce another to commit an offence under this section shall incur a like penalty. 7 Edw. VII. c. 4, s. 46.

Procuring
commission
of offence.

CREATION OF FALSE VOTES.

47.—(1) To prevent the creation of false votes, where a person claims to be assessed, or to be entered or named in an assessment roll, or claims that another person should be assessed, or entered or named in an assessment roll so as to entitle him to be a voter, and the assessor has reason to suspect that the person so claiming or for or in respect to whom the claim is made, ought not to be so assessed, or so entered or

Inquiries by
assessor.

named in the roll, it shall be the duty of the assessor to make reasonable inquiries before assessing, entering, or naming any such person in the assessment roll.

Penalty for improper insertion of names in roll.

(2) Any person who wilfully and improperly enters or procures or causes to be entered the name of a person in an assessment roll, or assesses or procures or causes the assessment of a person at too high an amount, with intent to give to a person not entitled thereto, either the right or an apparent right to be a voter; or who wilfully enters or procures or causes to be entered a fictitious name in an assessment roll, or who wilfully and improperly omits, or procures or causes to be omitted the name of a person from an assessment roll, or assesses or procures or causes the assessment of a person at too low an amount with intent to deprive a person of his right to be a voter, shall incur a penalty of \$200. 7 Edw. VII. c. 4, s. 47.

RECOVERY OF PENALTIES AND FINES.

Recovery of penalties.

48.—(1) Any penalty mentioned in the next preceding four sections may be recovered with costs by any person suing for the same in any court of competent jurisdiction.

Trial of actions for penalties.

(2) Actions for penalties incurred under this Act shall be tried by a Judge without a jury. 7 Edw. VII. c. 4, s. 48.

INSPECTION AND COPIES OF DOCUMENTS.

Right to inspect and copy assessment rolls, etc.

49. A voter, and an agent of a voter may, at all reasonable times, and under reasonable restrictions, inspect and take copies of or extracts from assessment rolls, notices, complaints, applications, and other documents and proceedings necessary or of use for the carrying out of the provisions of *The Municipal Act*, *The Assessment Act*, or of this Act; and the clerk for the said purposes shall accord all reasonable facilities which may be consistent with the safety of the documents, and the rights and interests of all persons concerned, and shall in regard to the matters aforesaid be subject to the direction of the Judge. 7 Edw. VII. c. 4, s. 49.

Rev. Stat. c.c. 192, 195.

Right to obtain copies of voters' lists.

50.—(1) The clerk of the peace and the clerk of a municipality having the custody of the list, shall furnish to any person who may require the same a certified copy of the list, then last revised and certified, or of any portion thereof, on being paid at the rate of four cents for every ten names on such list or portion thereof.

Charge.

Fee when printed copies furnished.

(2) If printed copies are furnished the fee for each copy shall be six cents, and all alterations made therein shall be verified by the initials of the officer furnishing such copies; and for every ten names in respect of which there are alterations or interlineations he shall be entitled to be paid an additional fee of four cents.

(3) For each copy of the list or of any of the parts thereof furnished to the returning officer, according to Form 6 in Schedule A to *The Ontario Election Act*, or according to Form 7 in the Schedule to *The Municipal Act*, the clerk of the peace furnishing the same shall be entitled to receive the sum of six cents for every ten voters whose names are on such list or part as the case may be.

Fees of clerk of the peace.

(4) In lieu of a copy of a list, or portion thereof, the clerk of the peace or the clerk of the municipality if required shall furnish a statement of the alterations and corrections made by the Judge, and the fees payable for such statement shall be at the rate of four cents for every ten names.

Copies of alterations made in lists by Judge.

7 Edw. VII. c. 4, s. 50.

PART II.

PREPARATION OF WARD LISTS.

51. Immediately after the return by the assessor of the assessment roll for any ward or subdivision of a ward, and without waiting for the revision and correction of the roll by the court of revision or by the Judge, the clerk of every city to which the provisions of this Part apply, shall prepare and print the alphabetical list of voters for such ward or subdivision in the manner prescribed by Part I.

Preparation of list where roll returned and revised by wards.

52.—(1) Forthwith after the preparation and printing of the last of such lists the clerk shall post up and distribute each of the alphabetical lists for each ward or subdivision in the manner prescribed by Part I., and forthwith after the clerk has posted up the lists in his office, he shall cause a notice to be inserted once a week for three weeks in each daily newspaper published in the city calling upon persons who are aware of errors or omissions in the lists or of changes which have been rendered necessary by reason of the death or removal of any person named therein or by reason of any person having acquired the necessary qualifications as a voter since the return or final revision of the assessment roll for any such ward or subdivision of a ward to give notice of the same, and shall name a time and place at which the Judge will hold the court for revising the lists for the whole city.

Posting up and distributing lists.

Notice of Court for hearing complaints.

(2) The time for making complaints as to errors or omissions in the lists shall be within twenty-one days after the first publication of the notice. 7 Edw. VII. c. 4, s. 52.

53. The Judge shall so arrange and proceed, and so fix the sittings of the court for hearing complaints against or in respect of the lists that the complaints shall be heard and determined and the lists finally revised and certified in manner provided by Part I. within ten days after the last day for making complaints and in any case before the twentieth day of December. 7 Edw. VII. c. 4, s. 53.

Time for final revision of lists.

Certifying lists where no complaint made.

54. If no complaint respecting any of the lists is received by the clerk within twenty-one days after the first publication of the notice the clerk shall forthwith apply to the Judge to certify three copies of each of the lists as being the last revised list of voters for the ward or subdivision, and the Judge shall certify such three copies and retain one, and deliver, or transmit by post registered, one to the clerk of the peace, and one to the clerk of the municipality, to be kept by him among the records of his office. 7 Edw. VII. c. 4, s. 54.

Procedure where complaints are made.

55.—(1) If any complaint is made as aforesaid with respect to any of the lists within such period the Judge shall proceed as provided by section 22 of this Act, and sections 23 and 24 of this Act shall apply to the list prepared under this Part.

When changes made in assessment roll subsequent to preparation of list.

(2) If the assessment roll is not finally revised before the final revision and certifying of the lists by the Judge, and upon appeal to the Judge from the court of revision alterations are made in the assessment roll affecting the right of any person to be entered on any of the lists, the Judge shall forthwith after the final revision of the roll, make out a list of such alterations and deliver the same to the clerk, who shall make corresponding changes in the certified copies of the revised list, and the Judge shall initial the same, and a copy of the list of alterations shall be posted up by the clerk in his office. 7 Edw. VII. c. 4, s. 55.

Effect of lists as completed.

56. The lists as so revised, corrected and certified by the Judge shall together form from time to time the last revised voters' list for the city within the meaning of this Act, *The Ontario Election Act* and *The Municipal Act*, and the date fixed by section 54 as the last day for making complaints to the Judge shall be deemed to be the last day for making complaints to the Judge within the meaning of any oath prescribed by any of said Acts and such date shall be inserted in any such oath when the voting is upon a list prepared under this Part. 7 Edw. VII. c. 4, s. 56.

Rev. Stat. c. 8, 192.

PART III.

LISTS IN TERRITORIES WITHOUT MUNICIPAL ORGANIZATION.

Appointment of chief enumerator.

57.—(1) The Lieutenant-Governor in Council may appoint a chief enumerator for each electoral district comprising territory without municipal organization, to prepare the voters' lists for such territory.

Assistant enumerators.

(2) The Chief Enumerator may appoint one or more assistant enumerators to assist him in the preparation of the voters' lists.

(3) The appointment shall be by writing in duplicate under the hand of the chief enumerator and shall designate the territorial area within his electoral district in which the assistant enumerator is to prepare lists. Mode of appointment.

(4) One of such duplicates shall be furnished to the assistant enumerator and the other shall be forthwith filed in the office of the chief enumerator and shall be open to inspection at all reasonable times. Filing appointment of assistant.

(5) A copy of the appointment certified by the chief enumerator to be a true copy shall be forthwith transmitted to the Clerk of the Crown in Chancery and shall be filed in his office. Copy for Clerk of the Crown in Chancery.

(6) The chief enumerator may dispense with the services of an assistant enumerator at any time, and may fill any vacancy caused by death, removal or otherwise, and may enlarge, diminish or alter the limits of the territory in which the assistant is to act as the chief enumerator may see fit. Changes among assistant enumerators.
3-4 Geo. V. c. 4, s. 1, *part*.

58. Every chief enumerator, and every assistant enumerator shall before entering upon his duties, take the oath of office, Form 20, before a Judge of the county or district court of the county or district in which he is to act or before a magistrate having jurisdiction therein, which oath in the case of the assistant enumerator, shall be forthwith transmitted to the chief enumerator, and in the case of the chief enumerator shall be forthwith transmitted by him to the Clerk of the Crown in Chancery. 3-4 Geo. V. c. 4, s. 1, Oaths of office.

59.—(1) The Lieutenant-Governor in Council may by proclamation direct the preparation of voters' lists for those parts of Ontario without municipal organization, or in any specified electoral district therein, and on such proclamation being issued, the chief enumerator upon appointment shall forthwith cause to be posted in a conspicuous manner throughout those parts of the territory for which he is appointed, at every public and separate school house, and at every statutory polling place, every post office, and at every other place which may be directed by the Lieutenant-Governor in Council, a copy of this part, and one or more printed notices, Form 21, and the chief enumerator or an assistant enumerator as the case may be, shall attend at the time and place mentioned in the notice. Proclamation for preparation of lists and duty of chief enumerator thereon.

(2) The chief enumerator shall also forthwith upon appointment notify the member representing the electoral district, the defeated candidate in the previous election in such district, and the known candidates before the people for election in such district, of the preparation of voters' lists, by sending by registered post a copy of this part and one printed notice, Form 21. 3-4 Geo. V. c. 4, s. 1, *part*. To whom notice to be sent.

Preparation
of lists.

60. Not less than ten days after the posting of notices, inclusive of the day of posting, the chief enumerator or an assistant enumerator shall visit every part of the territory where by statute or proclamation of the Lieutenant-Governor in Council, or by the direction of the chief enumerator there is required to be a polling place, and shall ascertain the names of all persons who are entitled to have their names entered on such lists, including any who may deliver to him an affidavit according to Form 22 or Form 23. 3-4 Geo. V. c. 4, s. 1, *part*.

Application of
general pro-
visions as to
duties of
Clerk and
Judge.

61.—(1) Save as otherwise provided, the Judge and assistant enumerators, so far as the same are applicable to territory without municipal organization, shall respectively perform the duties assigned to the Judge and to the clerk of a municipality and the Judge by this Act elsewhere in Ontario, and the forms and notices and other proceedings, shall be the same as nearly as may be, and be taken with the same effect as in the case of lists elsewhere in Ontario save as herein otherwise provided.

Appeals.

(2) All appeals shall be filed with the chief enumerator who shall perform all duties in respect to such appeals as nearly as may be, as is done by a clerk of a municipality.

Posting lists
and appeals.

(3) All lists and all appeals therefrom required to be posted shall be posted in the office of the chief enumerator. 3-4 Geo. V. c. 4, s. 1, *part*.

Sub-division
of lists.

62. The list shall be in several parts, one part for each polling place, and the name of each voter shall be entered in that part, the polling place for which is most convenient for him. 3-4 Geo. V. c. 4, s. 1, *part*.

Affidavit of
assistant
enumerator.

63. The assistant enumerator shall, on completion of his list, attach thereto an affidavit, Form 24, to be made before the Judge or a police magistrate. 3-4 Geo. V. c. 4, s. 1, *part*.

Where ir-
regularities
not to avoid
list.

64. The non-performance by the assistant enumerator of any of his duties under this Act within the times appointed shall not affect the validity of any list; nor shall such list be void for any irregularity, if there has been a substantial compliance with the requirements of this Act. 3-4 Geo. V. c. 4, s. 1, *part*.

Appeal to
Judge.

65.—(1) There shall be an appeal to the Judge in the same manner as elsewhere in Ontario, and the Judge shall without any unnecessary delay, attend to hear the appeals at such places as may be convenient for the parties concerned, and shall give due notice thereof.

Appeal as to
polling
place.

(2) A voter may also appeal with respect to the polling place at which his name is entered.

(3) At least ten days' notice, Form 25, (inclusive of the first day's publication) of the hearing of such appeals shall be given, by publication in a newspaper published in the county or district, and by posting as required by section 59. Notice of appeal.

(4) The proceedings in respect to such appeals shall be as nearly as may be, the same as upon appeals under Part I., save that the time within which notice may be given of any complaint or appeal to be made to the Judge with respect to a voters' list shall be ten days after the assistant enumerator has posted up the list, inclusive of the day of such posting. 3-4 Geo. V. c. 4, s. 1, *part*. Procedure on appeals.

66. If there is no appeal within such ten days, the enumerator shall forthwith deposit in the offices of the sheriff, and of every police magistrate in the electoral district, and in the office of the clerk of the peace, respectively, a copy of his list, certified by the Judge. 3-4 Geo. V. c. 4, s. 1, *part*. Certifying list where there is no appeal.

67.—(1) The chief enumerator and each assistant enumerator for preparing and the Judge for revising the lists required by this Part, shall be entitled to receive the sum of \$5 per day for the time during which he was engaged therein, and all reasonable personal expenses and disbursements. Fees of Enumerator and Judge.

(2) Whenever it appears to the Lieutenant-Governor in Council that the amount provided in subsection 1, is not sufficient remuneration for the services required to be performed, he may authorize the payment of such additional sum for such services as he may consider just and reasonable. When additional sums may be authorized.

(3) The fees, allowances and expenses payable under subsections 1 and 2, and the other expenses of preparing lists under this Part, shall be paid out of any money appropriated by this Legislature for that purpose. 3-4 Geo. V. c. 4, s. 1, *part*. How payable.

68. The provisions of sections 24, 42 and 43, shall apply to this Part. 3-4 Geo. V. c. 4, s. 1, *part*. Application of ss. 24, 42, 43.

69. No chief enumerator or assistant enumerator and no person in whose office the list is deposited under this Part, shall be a candidate for election to the Assembly at any election for which the list is to be used. 3-4 Geo. V. c. 4, s. 1, *part*. Enumerators, etc., not to be candidates.

70. If a chief or assistant enumerator omits, neglects or refuses to perform any of the duties hereinbefore required of him, for each omission, neglect or refusal, he shall incur a penalty of \$200. 3-4 Geo. V. c. 4, s. 1, *part*. Penalty for neglect of duty.

71. The wilful alteration of, omission from, incorrect entry in or falsification of any certified list or copy thereof, For misconduct.

shall be an offence, and any chief or assistant enumerator, clerk of the peace, sheriff, police magistrate or other person who commits such offence or wilfully permits the same to be committed shall incur a penalty of \$2,000. 3-4 Geo. V. c. 4, s. 1, *part*.

Recovery of penalties.

72.—(1) Any penalty mentioned in the next preceding two sections may be recovered by any person suing for the same.

Trial.

(2) Actions for penalties incurred under the next two preceding sections shall be tried by a Judge without a jury. 3-4 Geo. V. c. 4, s. 1, *part*.

What lists to be used.

73. Unless and until a new voters' list therefor has been prepared and certified, the voters' list last so prepared and certified shall be the proper voters' list to be used at such polling place at any election to the Assembly. 3-4 Geo. V. c. 4, s. 1, *part*.

Chief Enumerator, general powers of.

74. The chief enumerator shall have the general superintendence and direction of the assistant enumerators, and notwithstanding anything herein contained, may do and perform any of the duties assigned to an assistant enumerator. 3-4 Geo. V. c. 4, s. 1, *part*.

SCHEDULE OF FORMS.

FORM 1.

(Sections 6, 7, 8, 14.)

FORM OF VOTERS' LIST.

Voters' Lists, 19 Municipality of

SCHEDULE OF POST OFFICES.

1. North Augusta.
2. Maitland.

3. Wright's Corners.
4. Prescott.

POLLING SUBDIVISION No. 1, COMPRISING, ETC. :—(*Giving the limits.*)

PART I.—Persons entitled to vote at BOTH Municipal Elections and Elections to the Legislative Assembly..

NO. ON ROLL.	NAME.	Occu- pation.	LOT.	CON. OR STREET.		POST OFFICE ADDRESS.	JURORS' COLUMN
6	Anderson, Henry.		N W $\frac{1}{2}$ 6	3	M.F. and Owner	1	
14	Andrews, John ..		W 14 acres 8	1	M.F. and Tenant	4	
1	Archer, James....		2	9	M.F. and Income	4	
50	Brown, Simon....		W $\frac{1}{2}$ 9	2	M.F. and F.S.	3	
71	Burton, Samuel..		E $\frac{1}{2}$ 17	4	See Subdiv. No.	2	
	Etc.		Etc.	Etc.	Etc.	Etc.	

PART II.—Persons entitled to vote at Municipal Elections ONLY.

NO. ON ROLL.	NAME.	LOT.	CON. OR STREET.		POST OFFICE ADDRESS.
4	Archer, Henry.....	4	3	Owner.	2
82	Burk, Edmund.....	W $\frac{1}{2}$ 17	4	Tenant.	3
	Etc.	Etc.	Etc.	Etc.	Etc.

PART III.—Persons entitled to vote at Elections to the LEGISLATIVE ASSEMBLY ONLY.

NO. ON ROLL.	NAME.	LOT.	CON. OR STREET.		POST OFFICE ADDRESS.
43	Acroyd, James.....	N $\frac{1}{2}$ 3	4	M. F.	3
8	Amos, Joseph.....	3	7	M. F.	3
	Etc.	Etc.	Etc.	Etc.	Etc.

POLLING SUBDIVISION No. 2, COMPRISING, ETC. :—(*Giving the limits.*)
Etc., Etc., Etc.

7 Edw. VII. c. 4, Form 1; 9 Edw. VII. c. 26, s. 6 (3).

FORM 2.

(Section 11.)

CERTIFICATE TO BE ENDORSED ON VOTERS' LIST.

I, *A. B.*, Clerk of the Municipality of _____, in the County of _____, do hereby certify that Parts 1 and 3 of the within (or above) list constitute a correct list for the year 19____ of all persons appearing by the last revised Assessment Roll of the said Municipality to be entitled to vote at Elections for Members of the Legislative Assembly; and that Parts 1 and 2 constitute a correct list for the said year of all persons appearing by the said Roll to be entitled to vote at Municipal Elections in the said Municipality; and I hereby call upon all voters to take immediate proceedings to have any omissions or errors corrected according to law.

Dated this _____ day of _____

A. B.,
Clerk of

7 Edw. VII. c. 4, Form 2.

FORM 3.

(Section 13.)

CLERK'S NOTICE OF FIRST POSTING OF VOTERS' LIST.

*Voters' Lists, 19____.—Municipality of _____ of
County of _____*

Notice is hereby given that I have transmitted or delivered to the persons mentioned in section 9 of *The Ontario Voters' Lists Act* the copies required by said sections to be so transmitted or delivered of the list, made pursuant to said Act, of all persons appearing by the last revised Assessment Roll of the said Municipality to be entitled to vote in the said Municipality at Elections for Members of the Legislative Assembly and at Municipal Elections; and that the said list was first posted up at my office at _____, on the _____ day of _____, 19____, and remains there for inspection.

And I hereby call upon all voters to take immediate proceedings to have any errors or omissions corrected according to law.

Dated, etc.

A. B.,
Clerk of

7 Edw. VII. c. 4, Form 3.

FORM 4.

(Section 14, subsec. 5.)

I, _____, of the Township of _____, in the County of _____, make oath and say:—

1. That I am (or that _____ is to the best of my personal knowledge) a British subject of the full age of twenty-one years, and not a citizen or a subject of any foreign country.

2. That I have (or that the said _____ has) resided in the Dominion of Canada for the nine months next preceding the day of _____, 19____. (Fill in the day fixed for beginning

to make the assessment roll upon which the Voters' List is based) and that I was (or the said was) on the said day a resident of and domiciled in this municipality.

2. That on the ^{or} day of , 19 , (fill in the last day for making complaint to the County Judge), I will have (or the said will have), resided in the Dominion of Canada for the twelve months next preceding that day and that I am (or the said is) a resident of and domiciled in this municipality.

3. That I am (or the said is) entitled to be entered on the Voters' List for the Township of

4. That I am not (or that the said is not) disqualified under *The Election Act* or otherwise by law prohibited from voting at elections for the Legislative Assembly.

Sworn before me at the
of in the County of }
this day of
A. D. 19 . }

(Signature Justice of the Peace or Commissioner, etc.)

Note.—This affidavit may be made before a Justice of the Peace, a Commissioner for taking Affidavits or a Notary Public.

8 Edw. VII. c. 35, s. 15.

FORM 5.

(Sections 15, 17.)

VOTER'S NOTICE OF COMPLAINT.

To the Clerk of the Municipality of the of

I, *James Smith*, a voter (or a person entitled to be entered on the Voters' List) of the municipality of in the Electoral District of , complain (state the names of the persons in respect to whom complaint is made and the grounds of complaint touching each person, or set forth in lists as follows, varying according to circumstances) that the persons whose names are set forth in the subjoined list No. 1 are entitled to be voters in the Municipality of , as shown in said list, but are omitted from the Voters' List; that the persons whose names are mentioned in the first column of the subjoined list No. 2 are wrongly stated in the Voters' List; that the persons whose names are set forth in the first column of the subjoined list No. 3 ought not to have been entered on the Voters' List; and that there are errors in the description of the property in respect to which the names are entered on the Voters' List (or stating other errors), as shown in the subjoined list No. 4. And take notice, that I intend to apply to the Judge in respect thereof, pursuant to the statute in that behalf.

Dated the day of , 19 .

JAMES SMITH,
Residence, Township of Beby.

8 Edw. VII. c. 35, s. 15.

Lists of Complaints mentioned in the above Notice of Complaints.

LIST No. 1 (*shewing voters omitted from or not entered on the Voters' List.*)

NAMES OF PERSONS.	GROUND ON WHICH THEY ARE ENTITLED TO BE ON THE VOTERS' LIST.
James Tupper.....	Tenant to John Fraser, of N. $\frac{1}{2}$ lot 1, 2nd Con.
Simon Beauclerk...	Manhood Franchise Voter.
Angus Blain.....	Assessed too low—property worth \$

LIST No. 2 (*shewing voters wrongly named in Voters' List.*)

NAMES OF PERSONS.	POLLING SUB-DIVISION.	PART OF LIST.	THE ERRORS IN STATEMENT UPON VOTERS' LIST.
Joshua Townsend.	2	1	Should be <i>Joseph</i> Townsend.
John McBean.....	4	1	Should be John McBean <i>the younger</i> .
S. Connell.....	3	2	Should be <i>Simon</i> O'Connell. etc., etc.

LIST No. 3 (*shewing persons wrongfully inserted in the Voters' List.*)

NAMES OF PERSONS.	POLLING SUB-DIVISION.	PART OF LIST	STATEMENT WHY WRONGFULLY INSERTED IN VOTERS' LIST.
Peter White.....	4	1	Died before final revision of roll.
John May.....	3	2	Not entitled to Manhood Franchise.
David Walters....	2	2	Assessed too high—property worth under \$ etc., etc.

LIST No. 4 (*shewing voters whose property or qualification is erroneously described in Voters' List, etc.*)

NAMES OF PERSONS	POLLING SUB-DIVISION.	PART OF LIST.	ERRORS IN RESPECT TO PROPERTY OR OTHERWISE STATED.
Stephen Washburn	2	2	Name should be in Sub-division No. 2.
Thomas Gordon...	3	1	Property should be W. $\frac{1}{2}$ lot 7, in 3rd Con.
Ronald Blue.....	4	2	Should be described as owner, not tenant.

FORM 6.

(Section 17.)

CLERK'S REPORT IN CASE OF APPEALS AND COMPLAINTS TO THE JUDGE.

To His Honour the Judge of the County Court of the County of

The Clerk of the Municipality of _____ reports that the several persons mentioned in column 1 of the subjoined Schedule, and no others, have given to him written notice complaining of errors or omissions in the Voters' List for the said Municipality for 19____, on the grounds mentioned in column 2 of the said Schedule, and that such notices were received respectively at the dates set down in column 3 of the said Schedule.

Dated, etc.

A. B.,
Clerk of

Schedule.

1	2	3
NAME OF COMPLAINANT.	ERRORS OR OMISSIONS COMPLAINED OF.	DATE WHEN NOTICE OF COMPLAINT RECEIVED BY CLERK.

7 Edw. VII. c. 4, Form 6.

FORM 7.

(Section 17.)

JUDGE'S ORDER APPOINTING COURT FOR HEARING COMPLAINTS AND APPEALS.

To _____, Clerk of the Municipality of the

I appoint the _____ of _____ 19____, at the hour of _____ at _____ in the said county, for holding a Court to hear and determine the several complaints of errors and omissions in the said Voters' List for the Municipality of _____, for 19____.

I direct that the Assessor for the Municipality shall attend the sittings of the said Court, and that the Assessment Roll and the minutes of the Court of Revision for the Municipality for 19____, be produced thereat.

Dated _____ day of _____ 19____
Judge C. C.

7 Edw. VII. c. 4, Form 7.

FORM 8.

(Section 17.)

NOTICE TO BE POSTED BY CLERK IN HIS OFFICE WITH LIST OF COMPLAINTS.

Notice is hereby given, that a Court will be held, pursuant to *The Ontario Voters' Lists Act*, at _____, on the _____ day of _____ 19____, at _____ o'clock, _____ for hearing all complaints made against the Voters' List for the Municipality of _____ for 19____, particulars of which complaints are shown in the subjoined Schedule.

Dated, etc.

A. B.,
Clerk of

SCHEDULE.

NAME OF PARTY COMPLAINING.	NAME OF PERSON IN RESPECT TO WHOM APPEAL WAS MADE.	GROUND OF COMPLAINT ALLEGED.

7 Edw. VII. c. 4, Form 8.

FORM 9.

(Section 17.)

CLERK'S ADVERTISEMENT OF COURT IN NEWSPAPER.

Notice is hereby given that a Court will be held, pursuant to *The Ontario Voters' Lists Act*, by His Honour the Judge of the County Court of the County of _____, at _____, on the _____ day of _____ 19____, at _____ o'clock, _____ to hear and determine complaints of errors and omissions in the Voters' List of the Municipality of _____ for 19____.

Dated, etc.

A. B.,
Clerk of

7 Edw. VII. c. 4, Form 9.

FORM 10.

(Section 17.)

CLERK'S NOTICE TO PARTY COMPLAINING.

The Ontario Voters' Lists Act.

You are hereby notified that a Court of Revision of the Voters' List, 19____, for the Municipality of _____ will be held by the Judge of the County Court of the County of _____ at _____, on the _____ day of _____, 19____.

at o'clock, at which Court all complaints will be heard and determined. A list of complaints is posted up in and you are hereby required to appear at the Court; and take notice, that the Judge may proceed to hear and determine the complaints, whether the parties complaining appear or not.

By order of His Honour the Judge of the County Court of the County of

Dated day of , 19 .

To

A person complaining of error in the
Voters' List.

A. B.,
Clerk of the Municipality of , and
of the Court.

7 Edw. VII. c. 4, Form 10.

FORM 11.

(Section 17.)

CLERK'S NOTICE TO PARTY COMPLAINED AGAINST.

The Ontario Voters' Lists Act.

You are hereby notified that a Court for the Revision of the Voters' List, 19 , for the Municipality of , will be held by the Judge of the County Court of the County of , at , on the day of 19 , at o'clock, and you are required to appear at the Court, for that has complained that your name is wrongly inserted in the said Voters' List because (*state matter of complaint concisely*). A list of all complaints lodged is posted up in ; and take notice, that the Judge may proceed to hear and determine the said complaint, whether you appear or not.

By order of His Honour the Judge of the County Court of the County of

To

Entered on Voters' List.

A. B.,
Clerk of the said Municipality, and
of the Court.

7 Edw. VII. c. 4, Form 11.

FORM 12.

(Section 18, Subsec. 1.)

SEAL.

SUBPOENA.

ONTARIO:
County of ,
To Wit.

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To

Greeting:

We command you, that, all excuses being laid aside, you be and appear in your proper person before our Judge of our County

Court of the County of _____, at _____, on the _____ day of _____, 19____, at _____ o'clock in the _____ noon, at a Court appointed, and there and then to be held, for hearing complaints of errors in the Voters' List for 19____, of the Municipality of the _____ of _____, in the County of _____, and for revision of the said Voters' List, then and there to testify to all and singular those things which you know in a certain matter (or matters) of complaint made and now depending before the said Judge, under *The Ontario Voters' Lists Act*, wherein one _____ is complainant, and which complaint is to be tried at the said Court. (And if the witness is required to produce documents) that you bring with you and produce at the said time and place (*Set out the documents to be produced*). Herein fail not.

Witness, His Honour _____, Judge of our said Court at the _____ day of _____, in the year of our Lord 19____.

A. B.,
Clerk.

7 Edw. VII. c. 4, Form 12.

FORM 13.

(Section 21.)

REPORT OF CLERK WHEN APPLYING FOR CERTIFICATE UNDER SECTION 21.

To the Judge of the County Court of the County of _____, I, _____, Clerk of the Municipality of _____, in the County of _____, do hereby certify as follows:

That I did, on the _____ day of _____, 19____, post up, and for a period of thirty days next thereafter did keep posted up in a conspicuous place in my office at _____, a correct printed copy of the Voters' List for the Municipality of _____ for 19____, made in pursuance of *The Ontario Voters' Lists Act*, with the certificate required by section 11 of the said Act endorsed thereon.

That I did also deliver or transmit by post, by registered letter, or by parcel post, registered, the required number of similar printed copies of the List, with my certificate endorsed, to each of the persons entitled to the same under section 9 of said Act.

That I did on the _____ day of _____, 19____, cause to be inserted in the newspaper called the "_____" published in _____, the notice required by section 13 of the said Act.

That no person gave me nor did I receive, within thirty days after I had posted up the List in my office, any written notice of complaint or intention to apply to the Judge in respect to the List.

And that to the best of my knowledge and belief, I have complied with all the requirements of the said Act, so as to entitle me to apply for certified copies under section 21, and I now apply to you to certify three of the copies of the List received by you as being the Revised List of Voters for the municipality of the said _____ of _____ for 19____.

Witness my hand this _____ day of _____, 19____.

Clerk of the Municipality of _____
.....P. O.

7 Edw. VII. c. 4, Form 13.

FORM 14

(Section 21.)

CERTIFICATE WHERE NO COMPLAINTS.

A. B., Clerk of the Municipality of the _____, having certified under his hand that no complaint respecting the List of Voters for said municipality, for the year 19____, had been received by him within thirty days after the first posting up of the same: and on application of the Clerk, I, _____, Judge of the County Court of the County of _____, in pursuance of the provisions of *The Ontario Voters' List Act*, certify that the annexed printed List of Voters, being one of the copies received by me from the Clerk, under section 9 of the said Act, is the Revised List of Voters for the said Municipality for the year 19____.

Given under my hand and seal, at _____, this _____ day of _____, 19____.

Judge.

7 Edw. VII. c. 4, Form 14.

FORM 15.

(Section 22.)

CERTIFICATE OF JUDGE WHEN COMPLAINTS HAVE BEEN MADE.

I, _____, Judge of the County Court of the County of _____, pursuant to section 22 of *The Ontario Voters' Lists Act*, do hereby certify that the above (*as the case may be*) is a correct copy of the List of Voters, for the year 19____, received by me from the Clerk of the Municipality of the _____ of _____, according to my revision and correction thereof, pursuant to the provisions of the said Act.

Dated at _____, this _____ day of _____, 19____.

Judge.

7 Edw. VII. c. 4, Form 15.

FORM 16.

(Section 34, Subsec. 1.)

ORDER FOR PAYMENT OF COSTS.

The Ontario Voters' Lists Act.

In the matter of the Voters' List for the Municipality of _____, 19____, on the complaint or appeal of A. B., complaining of the name of C. D. being wrongly inserted in the said list (*or, as the case may be, stating in brief the nature of the complaint.*)

On proceedings taken before me I find and adjudge that the name of the said C. D. was rightly inserted in the said list (*or, was wrongly inserted in the said list*), and order that the said A. B. do pay the said C. D. his costs occasioned by the said complaint (*or, and order that the said C. D. shall pay the said A. B. his costs incident to the said complaint:—or, and order that E. F., the Assessor of the said Municipality, do pay the said A. B. his costs incident to the said complaint,—or, as the case may be, stating it in brief*), which I fix at the sum of \$_____.

Dated at _____, this _____ day of _____, 19____.

Judge.

7 Edw. VII. c. 4, Form 16.

FORM 17.

(Section 37.)

WRIT OF EXECUTION.

In the Division Court in the County of .
 Whereas on the day of , His Honour,
 Judge of the County Court of the County of ,
 made his order that *C. D.* should pay to *A. B.* dollars
 as and for his costs sustained by him on the trial of a complaint
 against the Voters' List for the Municipality of ,
 in the said County, for 19 , (or as the case may be) made and
 prosecuted under the provisions of *The Ontario Voters' Lists Act*,
 which said costs have been fixed and allowed at the said sum. You
 are hereby required to levy of the goods and chattels of the said
C. D. in the said County (not exempt from execution) the said
 money and your lawful fees, so that you may have the same within
 thirty days from the date hereof and pay the same over to the
 Clerk of this Court for the said *A. B.*

Given under the seal of the Court this day of
 , 19 .

X. Y.,
 Clerk.

To *V. W.*,
 Bailiff of said Court.

7 Edw. VII. c. 4, Form 17.

FORM 18.

(Section 43, Subsec. 1.)

APPLICATION TO JUDGE AGAINST DELINQUENT CLERK.

Pursuant to section 43 of *The Ontario Voters' Lists Act*, I, *A. B.*,
 Clerk of the Peace for the County of , (or, a person
 entitled to be entered on the Voters' List for the Municipality
 of , for 19 ,) hereby inform His Honour the
 Judge of the County Court of the said County, that *C. D.*, Clerk
 of the Municipality of , in the said County, has failed
 to perform the duties required of him as such Clerk by the said
 Act, in this, that he has not made out the Alphabetical List of
 Voters for 19 , for the said Municipality, within thirty days
 after the final revision and correction of the Assessment Roll
 thereof (or, has not delivered or transmitted printed copies of the
 Voters' List for the said Municipality, for 19 , to and
 and or to any of them, or, as the case may
 be, stating in brief the duty not performed), according to the re-
 quirements of the Act; and I apply to you to enforce the perform-
 ance of the duties aforesaid.

Dated at , this day of , 19 .
 A. B.,
 Clerk of the Peace.

7 Edw. VII. c. 4, Form 18.

FORM 19.

(Section 43, Subsec. 3.)

SUMMONS.

The Ontario Voters' Lists Act.

In the matter of the Voters' List for the Municipality of _____, in the County of _____, for 19____.

Whereas it appears by the application of A. B., the Clerk of the Peace for the said County, (or, a person entitled to be entered on the said List), made to me, in pursuance of the said Act, that you have failed to perform certain duties required of you by the said Act, in this, that you have not made out the Alphabetical List of Voters for 19____, for the said Municipality, within thirty days after the final revision and correction of the Assessment Roll thereof (or, as the case may be, following the application); and whereas the said A. B. has applied to me to enforce the performance of the duties aforesaid;

You are hereby required to appear before me at _____ in _____, on the _____ day of _____, 19____, at the hour of _____, and produce before me the Assessment Roll for 19____, for the said Municipality, and any documents in your custody, power or control, relating to the Assessment Roll, or to the List aforesaid; and submit yourself for examination on oath.

Dated this _____ day of _____, 19____.
To C. D.,

Clerk of the Municipality of _____

Judge.

7 Edw. VII. c. 4, Form 19.

FORM 20.

(Section 58.)

OATH OF ENUMERATOR PREPARING VOTERS' LISTS IN UNORGANIZED TERRITORY.

I, _____, of the _____ of _____, in the District of _____ and Province of _____, the enumerator whose duty it is under *The Ontario Voters' Lists Act* to prepare the Voters' Lists in and for the electoral district (or portion of the electoral district, describing such portion) of _____ in the Province of _____, do hereby solemnly swear that I will well and faithfully discharge the duties assigned to me by the said Act without favour or partiality; that I will place no name on the list of voters for the said electoral district (or portion of the said electoral district) or any of the polling districts thereof, and will omit no name from the same, unless I shall be satisfied that such name should by law be placed on or omitted from such list; and that I will in all respects, to the best of my ability, conform to the said Act and to the law. So help me God.

Sworn before me, at the _____ of _____ in the _____ of _____, and Province of _____, this _____ day of _____, A.D. 19____.

(District or County Judge, or Stipendiary Magistrate, as the case may be.)

7 Edw. VII. c. 4, Form 20.

FORM 21.

(Section 59.)

Take notice that (here insert the name of the Enumerator, will be in attendance at (here insert the place) from ten o'clock in the forenoon till four o'clock in the afternoon on the days of , 19 , to enroll the names of all persons qualified to vote for members of the Legislative Assembly.

Appeals with respect to the omission of voters or the improper enrolment of any alleged voter or as to any error made by the Enumerator as to the place at which a voter may vote may be made to (here insert the name of the County or District Judge, as the case may be).

(Signed)

Enumerator.

Dated at , this day of , 19 .

7 Edw. VII. c. 4, Form 21.

FORM 22.

(Section 60.)

FORM OF AFFIDAVIT BY A PERSON CLAIMING TO BE PLACED ON THE VOTERS' LIST.

I, , make oath and say as follows:—

I am a British subject by birth (or naturalization) and I am not a citizen or a subject of any foreign country, and I have resided in the Dominion of Canada for the nine months next preceding the day of , in the present year (the day to be filled in here is the date fixed by proclamation for commencing to prepare the list for the Electoral District of).

I was at the said date in good faith a resident of and domiciled in (giving name of municipality or place for which the lists are to be prepared) and I have resided therein continuously from the said date, and I now reside therein at (here give the deponent's residence with as much particularity as is practicable).

I am of the full age of 21 years and am not disqualified under The Ontario Voters' Lists Act or otherwise by law prohibited from voting at elections for the Legislative Assembly of Ontario.

Sworn before me at in }
the county of , this day of } Signature of Voter.
19 .

Signature of Justice of the Peace.

(This oath may be taken before the Enumerator or before any Justice of the Peace, Commissioner for taking Affidavits or Notary Public.)

7 Edw. VII. c. 4, Form 22a.

FORM 23.

(Section 60.)

FORM OF AFFIDAVIT FOR SAME PURPOSES AS FORM 22 WHEN THE PERSON HAS BEEN TEMPORARILY ABSENT.

I, , make oath and say as follows:—

I am a British subject by birth (or naturalization), and I am not a citizen or subject of any foreign country, and I have resided in the Dominion of Canada for the nine months next preceding

the day of , in the present year (*the date to be filled in here is the date fixed by proclamation for commencing the preparation of the lists for the Electoral District of*).

I was at the said date in good faith a resident of and domiciled in (giving the name of the municipality or place for which the lists are to be prepared) and have resided therein continuously (here give deponent's residence with as much particularity as is practicable), and I have not been absent from Ontario during the said nine months except occasionally or temporarily in the prosecution of my occupation as (mentioning the occupation, namely, a lumberman, or a mariner, or a fisherman, or a member of a permanent militia corps enlisted for continuous service, or a student in attendance in an institution of learning in the Dominion of Canada, naming the Institution.)

I am of the full age of 21 years and am not disqualified under *The Ontario Election Act* or otherwise by law prohibited from voting at elections for the Legislative Assembly of Ontario.

Sworn before me at , in }
the county of , this } Signature of Voter.
day of , 19 }

Signature of Justice of the Peace.

(This oath may be taken before the Enumerator or any Justice of the Peace, Commissioner for taking Affidavits or Notary Public.)

7 Edw. VII. c. 4, Form 22b.

FORM 24.

(Section 63.)

OATH OF ASSISTANT ENUMERATOR.

I, , make oath and say:—

1. That I have set down in the Voters' List for (*describe the territory for which the deponent is Enumerator*) according to the best of my information and judgment the name of every person entitled to be entered thereon.

2. That I have not entered upon the said List the name of any person which I have any reason to believe ought not to be entered thereon.

3. That I have not intentionally omitted from the said List the name of any person which I had any reason to believe ought to be entered thereon.

4. That I have to the best of my knowledge and belief discharged the duties required of me by *The Ontario Voters' Lists Act*.

Sworn before me at , in the District of , this
day of , 19 .

County (or District) Judge.

7 Edw. VII. c. 4, Form 23.

FORM 25.

(Section 65.)

NOTICE OF HEARING APPEALS.

ONTARIO VOTERS' LISTS ACT.

Take notice that the undersigned will be in attendance at (here insert the place) at o'clock, on the day of , to hear appeals with respect to the Voters' Lists for the Electoral District of .

(District or County Judge, as the case may be.)

7 Edw. VII. c. 4, Form 24.

CHAPTER 7.

An Act respecting the Registration of Manhood Suffrage Voters.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title and Application of Act.

1. This Act may be cited as *The Manhood Suffrage Registration Act* and shall apply to every city in Ontario and to every town being a county or district town having a population of nine thousand or over by the last Dominion census, and for the purposes of this Act every such town shall be deemed to be a city. 7 Edw. VII. c. 5, s. 1.

WHO MAY BE REGISTERED.

Persons entitled to be registered.

2.—(1) Every male person of the full age of 21 years, a subject of His Majesty by birth or naturalization, and not disqualified under *The Ontario Election Act*, and not otherwise by law prohibited from voting, and whose name is not entered on Part I. of the revised list of voters for the municipality in which he is otherwise qualified to vote, shall be entitled to be entered on the list of manhood suffrage voters for the polling subdivision in which he resides, if such person,

Residence in Canada.

(a) has resided in Canada for the twelve months next preceding the day on which the first sittings of the registrars of manhood suffrage voters for the preparation of the lists as is hereinafter directed is held; and

In the city or electoral district.

(b) was in good faith, on the last mentioned day, and for the three months next preceding the same, a resident of and domiciled in the municipality on the list of which he is to be entered; and in the case of cities divided into two or more electoral districts, and in any city parts of which are situated in two or more electoral districts, was in good faith on that day and for the next preceding thirty days a resident of and domiciled within the territory comprising the electoral district on the list of which he is to be entered. 7 Edw. VII. c. 5, s. 2 (1).

Militiamen and students.

(2) Members of a permanent militia corps enlisted for continuous service, persons on service as members of the

active militia, and students in attendance at an institution of learning who are during such service or attendance residents of the city and who are not entitled to be, or could not have been, and are not at the time of their application for registration, registered or entered upon any other list of persons entitled to vote at elections for the Assembly, shall be entitled to be registered as manhood suffrage voters in the city, if otherwise qualified under subsection 1 to vote therein. 7 Edw. VII. c. 5, s. 2 (2); 8 Edw. VII. c. 33, s. 17.

3. In case it is made to appear to the registrar that any person whose name is on Part I. of the Voters' List has ceased to be entitled to vote under Part I., but is otherwise qualified, such person upon taking the oath, Form 9, shall be entitled to be entered on the manhood suffrage list, and his name shall be erased from Part I. by the clerk of the peace upon the certificate of the registrar. 7 Edw. VII. c. 5, s. 3.

Transfer of
voters from
Part I. of
Voters' Lists.

BOARD OF REGISTRARS.

4.—(1) A Board shall be constituted in every city for preparing lists of persons entitled to be registered as manhood suffrage voters, and shall be called "The Board of Manhood Suffrage Registrars," and every member thereof shall be deemed a registrar within the meaning of this Act.

Board of
registrars.

(2) No person who as registrar or registry clerk was engaged in the preparation of the voters' lists to be used at any election, shall be eligible as a candidate at such election. 7 Edw. VII. c. 5, s. 4.

Registrar and
registry clerk
not to be
candidates.

5.—(1) The Board shall consist of the officials hereinafter mentioned, who may from time to time appoint so many other registrars as shall be necessary with the original members of the Board, so that there shall be one registrar for each registration district into which the electoral district is divided, and the appointments shall be evidenced by a writing, Form 1, under the hand of the Chairman. 7 Edw. VII. c. 5, s. 5 (1); 3-4 Geo. V. c. 18, s. 5 (1).

Constitution
of boards.

(2) In Toronto the members shall be nine in number, namely, the four Judges of the county court, the Master in Ordinary, the Master in Chambers, the Master of Titles, the Police Magistrate, and the Inspector of Legal Offices. 7 Edw. VII. c. 5, s. 5 (2).

Members of
board in
Toronto.

(3) In Niagara Falls the members shall be three in number, namely, the Police Magistrate, the clerk of the municipality and the clerk of the division court. 8 Edw. VII. c. 33, s. 18.

Niagara Falls.

(4) In Fort William the members shall be three in number, namely, the Police Magistrate of Fort William, the clerk of the municipality and the clerk of the division court.

Fort William.

Port Arthur.

(5) In Port Arthur the members shall be three in number, namely, the Judge of the district court, the Police Magistrate, and the Local Registrar of the Supreme Court.

Members in other cities.

(6) In every other city the members of the board shall be the two Judges of the county or district court of the county or district in which the city is situate, the Police Magistrate and the Local Master of the Supreme Court, but where either of the Judges is Local Master, the clerk of the county or district court shall be the fourth member of the Board, and where there is but one Judge the members shall be the Judge, the Police Magistrate for the city, the Local Master, and the clerk of the county or district court, and where the Judge is Local Master the Registrar of Deeds for the city shall be a member, or if there is no such Registrar, the Registrar of Deeds having his office in the city or the Registrar of Deeds for the registry division in which the city is situate shall be a member.

Filling vacancies.

(7) If there is a vacancy on the Board, or if a member is absent from Ontario, or is unable to act, the other members of the Board shall appoint a fit and proper person to fill the vacancy.

Clerk.

(8) The Board shall appoint a fit and proper person to be its clerk. 7 Edw. VII. c. 5, s. 5 (3), (7).

Oath of registrar.

6. A registrar before acting, shall take and subscribe before a member of the Board, a commissioner for taking affidavits, or a Justice of the Peace, the oath, Form 2. 7 Edw. VII. c. 5, s. 6.

Appointment of chairman.

7. The Lieutenant-Governor in Council may, at any time before or after the issue of a proclamation dissolving the Assembly, appoint a member of the Board to be Chairman. 7 Edw. VII. c. 5, s. 7.

Municipality to provide necessary accommodation.

8.—(1) The municipal corporation shall provide for the registrars, and for the Board of Appeal, suitable and convenient places properly furnished, heated and lighted, for the holding of their sittings; and in case the same are not provided in due time the Board shall provide the necessary accommodation, the expense whereof shall not exceed \$15 for each place, unless the Board on account of exceptional circumstances is unable to obtain suitable accommodation for that amount, and the expense incurred by the Board in providing such accommodation, and also for stationery and other requirements of the Board, shall be paid by the treasurer of the corporation upon the order of the Chairman of the Board.

Registration not to take place in tavern.

(2) The building in which the registration takes place shall not be a tavern or place of public entertainment, and there shall be free access for every person desiring to be registered.

(3) The places provided by the municipal corporation for holding the sittings shall be subject to the approval of the Board or of some member thereof authorized to approve of the same on behalf of the Board, and if not approved, the Board or such member may select satisfactory places, and the cost thereof shall be paid by the corporation. 7 Edw. VII. c. 5, s. 8.

Approval of
place of
registration
by board.

REGISTRATION DISTRICTS.

9. Where a city is divided into two or more electoral districts two of the members of the Board shall be assigned by the Board to each of the electoral districts. 7 Edw. VII. c. 5, s. 9.

Division
of duty.

10. The Board shall divide each electoral district into registration districts for the purpose of registration, grouping together for that purpose as compactly as they find convenient the polling subdivisions of each district, and shall assign a registrar to each registration district, and shall fix the time and place for holding the sittings of the Board of Appeal. 7 Edw. VII. c. 5, s. 10.

Sub-division
of districts.

11. At each place of registration a member of the Board or an appointed registrar designated by the Board, shall attend for the purpose of registering voters. 7 Edw. VII. c. 5, s. 11.

Who to act
at place of
registration.

PROCEEDINGS FOR REGISTRATION.

12.—(1) Immediately after the issue of a proclamation dissolving the Assembly, or in the case of a by-election, immediately after the issue of the writ of election, the Clerk of the Crown in Chancery shall notify the Chairman of the dissolution or of the issue of the writ; and in the case of a dissolution and also in the case of a by-election where a new registration is required the Chairman shall call the Board together on receiving such notice, and the Board shall forthwith take the necessary proceedings for registration.

When board
to be called
together.

(2) In the case of a by-election the notice to the Chairman shall state whether or not a new registration is required. 7 Edw. VII. c. 5, s. 12.

By-elections.

13.—(1) Every registrar shall appoint, Form 3, a clerk, hereinafter referred to as the "registry clerk," to assist him in preparing the lists of the persons entitled to vote in the subdivisions of the district for which such registrar has been appointed.

Registry
clerk.

(2) Every registry clerk shall, before acting, take and subscribe before a registrar, a commissioner for taking affidavits, or a Justice of the Peace, the oath, Form 4. 7 Edw. VII. c. 5, s. 13.

Oath of Registry
Clerk.

Sittings of Registrars.

Sittings of
registrars.

14.—(1) Each registrar shall hold four sittings for registration under this Act, the first of which shall be held on the seventh day after the date of the writ for holding the election, computing in such time any intervening Sunday, and the same days shall be appointed for all the registration districts in an electoral district.

In cities of
20,000 or less.

(2) In cities where the population is 20,000 or less according to the last census of Canada or the last assessor's enumeration it shall be sufficient if the registrars shall hold their sittings on three separate days instead of four, one of the days being Saturday. 7 Edw. VII. c. 5, s. 14.

When to be
held.

15.—(1) The sittings shall be held on consecutive days, except Sunday, and shall continue from ten o'clock in the morning until nine o'clock in the evening, with intermissions from one o'clock to two o'clock and from six o'clock to half-past seven o'clock.

Sittings on
Saturday.

(2) If the holding of the sittings on consecutive days will not allow of a sitting being held on a Saturday, the last sitting shall be held on a Saturday, and the second and third sittings on such days as the Board appoints.

Hours for
workingmen.

(3) The time from half-past seven o'clock until half-past eight o'clock on each of the four days shall, as far as possible be set apart for the registration of workingmen. 7 Edw. VII. c. 5, s. 15.

Notice.

Notice of time
and places of
sittings for
registration
and of Board
of Appeal.

16. The Chairman of the Board shall give public notice of the times and places appointed for the registration sittings, and of the time and place for holding the meetings of the Board of Appeal, by posters headed in large letters, "Registration of Manhood Suffrage Voters," which shall give the outside limits of each group of polling subdivisions for which the respective registration sittings will be held, but need not give the limits of the subdivisions, and at least five of such posters shall be put up in public and conspicuous places in each polling subdivision. 7 Edw. VII. c. 5, s. 16.

Books.

Index book
to be kept by
each registrar.

17.—(1) For the purpose of preparing the lists the Chairman shall cause each registrar to be furnished with an alphabetical index book for each polling subdivision in his district, the pages of which shall be according to Form 5 in the schedule hereto, and upon the first page thereof the limits comprising the polling subdivision for which the book is intended and the number of such polling subdivision, in accordance with the revised list of voters, shall be stated, and such limits and number shall also be distinctly shown on the outside of the front cover.

(2) The Chairman shall cause each Registrar to be furnished with a book demy size containing such number of forms of the oaths, Forms 7, 8 and 9, as may appear necessary. Book of oaths.

(3) Paragraph A of the said forms shall not be inserted in the oath administered unless an agent for a candidate or political organization present under section 25 desires it to be inserted, or the registrar deems its insertion expedient. Clause respecting bribery.

(4) The registrar shall sign above paragraph A where it is omitted in the oath as administered, and under paragraph A where it has been inserted as part of the oath administered. 7 Edw. VII. c. 5, s. 17 Marking clause where used or omitted.

Mode of Registration.

18.—(1) The registrar, or the registry clerk under his direction, shall register in the several polling subdivision books the names and residences, as stated in their oaths respectively, of all persons applying to be registered, who take either of the oaths hereinbefore mentioned, unless it clearly appears to the registrar from the answers of an applicant to the questions put to him and from any evidence then produced that he is not entitled to be registered as a voter, and each person entitled to be registered shall be registered in the book for the polling subdivision in which he resides, and no other. Mode of registering names.

(2) The registrar, or registry clerk under his direction, shall before administering the oath to any applicant for registration, fill up from the statements of the applicant the blanks for the name and other particulars required to be entered in the list of voters, and shall also fill up such other blanks as are necessary to be filled, in order to make the oath complete, and shall then administer the oath to the applicant and subscribe the same. Entry of particulars.

(3) The registrar, or registry clerk under his direction, may administer the oath to any number of persons not exceeding four at the same time, unless objection is taken by any agent present, in which case the applicants shall be sworn separately. Administration of oath for convenience.

(4) The names shall be classed alphabetically in accordance with the surnames of the applicants Arrangement of names.

(5) If an applicant refuses to take the oath, or refuses, or is unable to give the information requisite to enable the Registrar to fill up the particulars in respect of the applicant and of his residence which by this section or by the notes at the foot of the form of oath are required to be inserted therein, the applicant shall not be registered either at that or any subsequent sittings. If such refusal or the discovery of the applicant's inability as aforesaid takes place after his name Refusal to take the oath or give information.

has been written in a form of oath, the registrar or the registry clerk under his direction shall write at the foot of form "refused to swear," or "unable to give particulars," as the case may be.

List of applicants refusing.

(6) A list of all persons who refuse to take the oath, or refuse or are unable to give the information required as aforesaid, shall be kept by the registrar and delivered to the clerk of the peace with the list of persons registered.

Comparison of entries in books.

(7) At the end of each day, or at intervals available during the day, the registrar and registry clerk, in the presence of those entitled to be present, shall compare the entries in the book of oaths with the entries in the polling subdivision books in order to see that no name has by mistake been entered in the wrong polling subdivision book, and may correct any mistake then discovered therein, and in case, to correct such mistake, any name has to be transferred from one book to another the entry so transferred shall be distinctly struck out with pen and ink, but left legible, and a note shall be made immediately adjacent that the name was entered by mistake, and has been transferred to another subdivision book, and the numbers of such subdivisions shall be stated, and the registrar and registry clerk shall affix their initials to the note.

Note of entries at each sitting.

(8) After the comparison is complete, and any necessary corrections are made, there shall be written or stamped on the line immediately under the last name which has been entered under the letter A, the words, "End of first sittings," and this shall be repeated at each letter under which names have been entered.

Where no name has entered under letter.

(9) If there is an index letter under which no name has been entered during the sittings, the like words shall be written or stamped on the first line of the first page of every such letter.

Entries at close of sittings.

(10) Similar entries, naming the proper sittings, shall be made at the close of each sitting, and the registrar shall certify at the end of each book as required by section 30.

Interference with books.

(11) No person except the registrar or the registry clerk shall write upon or in any way meddle with the books, and the registrar shall keep the same in his custody until he delivers them to the clerk of the peace.

Entry of oaths taken.

(12) At the close of each sittings the registrar shall make and sign a memorandum immediately under the last oath administered stating that the preceding oaths signed by him were taken before him on that day, and giving the day of the month and year when the same were taken. 7 Edw. VII. c. 5, s. 18.

Persons unable to attend sittings.

19.—(1) Where a claim is made that a person who is otherwise entitled to be registered, hereinafter referred to as an

“absentee,” is unable to attend the sittings held for registration, or any of them,

(a) by reason of sickness or other physical disability; or On account of sickness.

(b) by reason of such person being Temporary absence.

i. temporarily absent from the city and from the county in which the city is situate, or

ii. a member of a permanent Militia Corps enlisted for continuous service, or

iii. on service as a member of the Active Militia, or

iv. a student in attendance at an Institution of learning in Canada,

and application is made to the proper registrar for the registration of the absentee, the registrar, if satisfied by evidence adduced as hereinafter provided that the absentee, is entitled to be registered, shall register such absentee, if the applicant delivers to the registrar an affidavit, Form 13, made by the absentee hereinafter referred to as “The Affidavit of Qualification,” stating such facts as he would have been required to depose to before being registered, had he applied in person, or in case the person applying makes and delivers to the registrar an affidavit wherein the applicant deposes to such facts, and provided the applicant, in either case also delivers an affidavit, Form 14, hereinafter referred to as “The second affidavit,” wherein the applicant deposes to the facts other than those set out in the affidavit of qualification, which authorize the registration of the absentee without his personal appearance, and the statements in the second affidavit shall be positive, or if on information and belief the source of the deponent’s information shall be clearly stated, and the registrar shall decide as to the sufficiency of the affidavit. 7 Edw. VII. c. 5, s. 19 (1); 8 Edw. VII. c. 33, s. 19 (1). Registration on filing affidavit.

(2) The registrar may require any applicant to give evidence before him on oath, and may also hear any other evidence on oath which may be adduced either for or against the application, and unless the registrar is satisfied that the absentee is entitled to be registered he shall refuse registration. Further evidence required.

(3) Any resident of the municipality may apply for the registration of an absentee. Who may apply for absentee.

(4) The applicant’s affidavit shall set forth the facts entitling him to apply for the registration of the absentee and shall also state the Christian name and surname and the occupation of the applicant, and his place of residence, with the same particularity as is required in the oath of qualification. Authority of applicant.

Illiterate
applicant.

(5) Where the applicant appears to be illiterate, the registrar before acting upon the affidavits shall be satisfied that the deponent understands the same and may in any case require the applicant to re-swear before him an affidavit purporting to be made by such applicant.

Entry made
in book.

(6) Opposite the name of each person registered without his being personally present, the registrar shall, in the polling subdivision book, write or cause to be written the word "Absentee."

Renewal of
application.

(7) In case an application made to register any person as an absentee is refused, no other application to register him as an absentee shall be entertained, unless the registrar is satisfied that the refused application was made in order to deprive the absentee of his right to registration, or unless leave to renew the application was reserved.

Hours for
application.

(8) An application to register an absentee shall not be received at any sittings after six o'clock in the afternoon.

List of refused
applications.

(9) The registrar shall keep a list of all refused applications to register absentees and shall deliver the same and the affidavits in connection therewith to the clerk of the peace when he delivers to him the list of persons registered. 7 Edw. VII. c. 5, s. 19 (2)-(9).

APPEALS.

Board of
Appeal.

20.—(1) There shall be a Board of Appeal which shall consist of the members of the Board of Manhood Suffrage Registrars unless the same is composed of more than three members, in which case the Board shall appoint two of its members to constitute, with the Chairman, the Board of Appeal.

Chairman.

(2) The Chairman of the Board of Manhood Suffrage Registrars shall be Chairman of the Board of Appeal.

Clerk.

(3) The Board may appoint the clerk of the Board of Manhood Suffrage Registrars or one of the registry clerks to be clerk of the board.

Notice of
appeal.

(4) If a Registrar refuses to register an applicant who has taken or is willing to take the oath, the applicant may, upon giving notice in writing, Form 12, within twenty-four hours thereafter to the registrar of his intention so to do, appeal to the Board of Appeal, which shall have authority to hear and determine all cases so brought before it upon *viva voce* evidence to be taken upon oath, which may be administered by any member of the Board.

Decision of
board.

(5) The decision of the Board of Appeal shall be given at least three days before the day fixed for holding the poll and shall be final.

(6) If the Board decides that an appellant is entitled to vote a certificate to that effect shall be given him, which shall state the polling subdivision in which the appellant is entitled to vote, and, upon production of the certificate, the appellant shall have the same right to vote as if his name had been entered on the voters' list. Certificate allowing appeal.

(7) An appeal shall also lie in like manner and on the like notice, and upon a further notice to the person registered, from the decision of a registrar registering the name of any applicant, and the decision shall be given within the time limited by subsection 5; and if the appeal is allowed, a certificate of the decision shall be given by the Chairman of the Board to the returning officer of the electoral district and shall be by him delivered to the deputy-returning officer of the polling subdivision named in the certificate, and the deputy-returning officer shall not thereafter receive the vote of such person. Appeal from decision of registrar to register any name.

(8) The notice to the person registered, provided for by the next preceding subsection, shall be served within twenty-four hours after the decision appealed from, and may be served personally or by leaving a copy at the place of residence of the person registered set out in his oath. 7 Edw. VII. c. 5, s. 20. Notice of appeal.

21.—(1) Any person may obtain from any member of the Board of Appeal or from any member of the Board of Manhood Suffrage Registrars an order, Form 6, requiring the attendance before the Board of Appeal, at the time mentioned in the order, of a witness residing, or served with the order in any part of Ontario; and requiring the witness to bring with him and produce at the hearing of the appeal any papers or documents mentioned in the order, and every witness served with the order shall obey the same, provided his expenses, according to the scale allowed in division courts, are paid or tendered to him at the time of service. Securing attendance of witnesses.

(2) Any person appealing, or any person in respect of the registration or omission of whose name a notice of appeal is given, shall, if resident within the city, upon being served therein, obey the order without being tendered or paid his expenses. Duty of party interested to attend.

(3) The order shall be sufficiently served upon any such person— Service of order.

(a) if the order is served upon him personally; or

(b) where he has a known residence or place of business within the city, if a copy of the order is left for him with some grown person at such residence or place of business; or

(c) where he has no known residence or place of business within the city, if a copy of the order is mailed

to him through the post office, prepaid, directed to him at the address contained in any affirmation or affidavit made by him under this Act.

Striking off for non-attendance, etc.

(4) If a person, whose right to be a voter is the subject of enquiry, does not attend in obedience to the order, the Board, in the absence of satisfactory evidence as to the reason for his non-attendance, or as to his right to be a voter may on the ground of his non-attendance, strike his name off the list of voters, or refuse to enter his name thereon, or may impose on him a fine not exceeding \$20, or may do both.

Subpoena may include several names.

(5) The names of any number of witnesses may be inserted in one order. 7 Edw. VII. c. 5, s. 21.

List of certificates for Clerk of Peace.

22.—(1) The Board shall deliver to the clerk of the peace a list of the persons to whom the Board has given certificates under the provisions of subsection 6 of section 20, with their occupations and residences and the subdivisions in which they may vote, and the names shall be entered on a supplementary list with the words "on appeal" written thereafter.

Copy for Returning Officer.

(2) The clerk of the peace shall forthwith furnish a copy of such list to the returning officer, who shall forthwith cause the proper deputy returning officers to enter the names of the persons mentioned therein on the lists of their respective polling subdivisions, with the words "on appeal" written thereafter.

List of names struck off on appeal.

(3) The Board shall also deliver to the clerk of the peace a list of the persons whose names have been struck off the voters' list, with their occupations and residences, and the subdivisions for which they were respectively registered.

Copy for Returning Officer.

(4) The clerk of the peace shall forthwith furnish a copy of such list to the returning officer, who shall forthwith cause the proper deputy returning officers to erase such names from the list, and the words "on appeal" shall be written after every such erasure.

Certificates.

(5) The lists shall be certified, Forms 10 and 11, by the Chairman of the Board. 7 Edw. VII. c. 5, s. 22.

PRESERVATION OF THE PEACE.

Preservation of the peace.

23.—(1) Every registrar shall, during the days on which the sittings are held, be a conservator of the peace and invested with the same powers with which justices of the peace are invested in Ontario, and may appoint as many special constables as he deems necessary for the purpose of carrying out the provisions of this Act, or for the removal from the place of registration, or for the arrest or detention of persons who are charged with personation, or who are or have been impeding or improperly interrupting his proceedings or creating a disturbance.

Special constables.

(2) The registrar may verbally direct the forcible removal of any such person from the place of registration. Verbal directions for removal.

(3) The special constables shall have power to act, without taking any oath, and shall be paid by the city. Oath unnecessary.

(4) Every registry clerk shall have the authority of a constable for the purposes aforesaid. 7 Edw. VII. c. 5, s. 23. Registry clerk as constable.

24. The chief of police of the city shall cause a constable to be in attendance at each place of registration during the time the same is kept open and so long as the registrar remains there. 7 Edw. VII. c. 5, s. 24. Constables to attend.

WHO ENTITLED TO BE PRESENT AT SITTINGS.

25.—(1) Any person whom the Board deems to be in good faith a candidate to represent the electoral district may appoint, in writing, two electors as agents to represent him at any registration sittings, and in the absence of any person authorized in writing to act as agent for an absent candidate, any elector in the interest of such candidate may declare himself to be and may act as agent of such candidate, without producing any special authority in writing for that purpose. What agents may be present.

(2) Any political organization not represented by a candidate or his agents, may also appoint, in writing, duly authenticated to the satisfaction of the Registrar, two electors as agents to represent such organization at any registration sittings. 7 Edw. VII. c. 5, s. 25. What agents of political organizations may be present.

26.—(1) Subject to such directions as the Registrar may from time to time give to prevent the proceedings being delayed or interfered with, any elector shall be entitled to be present as a spectator at a registration sittings, provided that no more than twelve persons other than the officers, candidates and agents shall be entitled to be present at the same time, and no person shall ask any question of an applicant for registration unless such person is a candidate or the agent of a candidate, and no candidate or agent shall ask any such question except through the registrar, or by his permission. Presence of electors at registration.

(2) The registrar, in giving directions, shall allow a fair proportion of all political parties to remain in the place of registration. 7 Edw. VII. c. 5, s. 26. Fair representation of parties.

EMERGENCIES PROVIDED FOR.

27.—(1) If a registrar refuses, neglects, or becomes unable to perform the duties of his office, and if no other registrar appears at the place of registration the registry clerk shall act as registrar and perform all the duties and be subject to all the obligations of that office as if he had been appointed registrar, and without taking a new oath for that purpose. Refusal or neglect of registrar to act.

Appointment
of registry
clerk.

(2) Where a registry clerk acts as registrar under this section he shall, in writing, appoint, Form 3, another person to act as registry clerk, and the person so appointed shall before acting, take and subscribe before the person appointing him the oath, Form 4.

Registry clerk
refusing or
neglecting to
act.

(3) Where a registry clerk refuses, neglects or becomes unable to perform his duties, the registrar may, in writing, appoint another person to act as registry clerk; and the person so appointed shall, before acting, take and subscribe before the registrar the oath, Form 4. 7 Edw. VII. c. 5, s. 27.

Failure to
commence at
appointed time
—Interrup-
tions to
sittings.

28. In case, by reason of riot or emergency, a registration sittings is not commenced on the proper day, or at the proper hour, or is interrupted after being commenced and before the lawful closing thereof, the registrar shall hold or resume the registration on the following day at the hour of nine o'clock in the forenoon, and continue the same from day to day, if necessary, until the place of registration has been opened without interruption and with free access to persons desiring to be registered, for forty-four hours in all, but the registration shall be completed at least three days before the polling day. 7 Edw. VII. c. 5, s. 28.

When place
appointed can-
not be used.

29. When for any reason it becomes impossible to use the place appointed for the registration of voters, another place shall be procured by the registrar, and such notice of the change as is practicable shall be given. 7 Edw. VII. c. 5, s. 29.

DELIVERY OF LISTS TO CLERK OF THE PEACE.

Delivery of
lists to clerk of
the peace.

30.—(1) The day after the last of the sittings the registrar shall deliver to the clerk of the peace the books containing the lists, having first appended to each his certificate to the effect that the list is a true and correct list of all persons who appeared before him at the sittings for the registration of persons entitled to vote under this Act and took the oath necessary to entitle them to have their names placed thereon, and he shall in the certificate state the dates of the sittings, and shall at the same time deliver to the clerk of the peace the book containing the oaths of the persons registered.

Appeals not to
delay delivery
of books.

(2) The delivery of the lists to the clerk of the peace shall not be delayed by reason of appeals from the decision of any registrar.

Duties of clerk
of peace as to
books.

(3) It shall be the duty of the clerk of the peace to see that the books are duly returned to him.

Books to be
retained until
another
registration.

(4) The clerk of the peace shall retain the books in his office until they are superseded by another registration, when they may be destroyed, unless the Attorney-General of

Ontario or a Court shall direct their preservation for a further period. 7 Edw. VII. c. 5, s. 30.

BY-ELECTIONS.

31.—(1) In case of a by-election, the writ for which bears date more than one year subsequent to the polling day of a previous election for which registration sittings were held, the proceedings for registration hereinbefore directed in the case of a general election shall be taken unless the Clerk of the Crown in Chancery shall, on the issue of the writ, give notice in writing to the Chairman of the Board that a new registration is not required. When registration necessary for by-election.

(2) The Clerk of the Crown in Chancery shall give such notice in case the First Minister of the Executive Council of Ontario and the Leader of the Opposition in the Assembly certify to the clerk in writing that in their opinion a new registration is unnecessary. 7 Edw. VII. c. 5, s. 31. When new registration to be held.

32. In case of a by-election, the writ for which bears date not more than a year subsequent to the polling day of the next preceding election for which registration was made, no new registration shall be had unless the Clerk of the Crown in Chancery shall give notice in writing to the Chairman that a new registration is desired, which he shall do upon the written request of the First Minister of the Executive Council or of the Leader of the Opposition. 7 Edw. VII. c. 5, s. 32. Case of by-election held less than one year after registration.

LIST TO BE CONCLUSIVE.

33. A list prepared under this Act shall be final and conclusive as to the manhood suffrage voters in the same manner and to the same extent as the voters' list certified by the Judge of a county court. 7 Edw. VII. c. 5, s. 33. Effect of lists.

COPIES TO BE FURNISHED.

34. The clerk of the peace shall furnish certified copies of the names and other particulars in any of the subdivision books, to any person who may require the same, upon payment of the like fees as are prescribed for similar services by *The Ontario Voters' Lists Act*. 7 Edw. VII. c. 5, s. 34. Clerk of the peace to furnish copies. Rev. Stat. c. 6.

BOOKS AND FORMS.

35.—(1) The Clerk of the Crown in Chancery shall cause the books and forms mentioned in this section to be prepared and printed, and he may either distribute the same to the clerk of the peace for the use of the registrars, or he may cause sample copies thereof to be prepared and delivered to the clerk of the peace. Distribution.

Duty of
clerk of
the peace.

(2) When copies are delivered to him, the clerk of the peace shall upon receipt thereof deliver to the Chairman of the Board a sufficient number of them for the use of the registrars, and, when sample copies, he shall immediately obtain or cause to be printed a sufficient number of copies for the use of the registrars, and shall deliver the same to the Chairman of the Board.

Providing
forms.

(3) The clerk of the peace shall provide such forms as are not furnished by the Clerk of the Crown in Chancery.

Enumeration
of books
and forms.

(4) The books and forms referred to in this section are the following:—

Oaths of registrars.

Appointment of registrars by the Board.

Appointments and oaths of registry clerks.

Books containing forms of oaths to be taken by applicants for registration.

Alphabetical index books for the registration of voters.

Books for lists of persons refusing to take the oath or unable to give the particulars required.

Fees of clerk
of the peace.

(5) For his services under this section in respect of each election the clerk of the peace shall be paid by the city the sum of \$10 and his disbursements. 7 Edw. VII. c. 5, s. 35.

MISTAKE OR MISCARRIAGE.

Effect of
immaterial
irregularities.

36. The times limited by this Act shall be directory only, and any mistake or miscarriage in respect thereof shall not invalidate an election, unless the mistake or miscarriage is of such a nature that in the opinion of the Election Court it may have affected the result of the election, but this shall not prevent the election from being avoided where the mistake or miscarriage was brought about in whole or in part by the improper conduct of a candidate or his agent. 7 Edw. VII. c. 5, s. 36.

OFFENCES AND PENALTIES.

Corrupt
practices.

37.—(1) The following persons shall be deemed guilty of an offence and shall be punishable accordingly:—

Bribery.

(a) Every person who, before or during the registry sittings, directly or indirectly, by himself or by any other person in his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, or office, place or employment, for himself or any other person, for being or for agreeing, or for refraining or agreeing to refrain from being registered;

- (b) Every person who, after any such sittings, directly or indirectly, by himself or by any other person on his behalf, receives any money, gift, loan or valuable consideration, or accepts any office, place or employment on account of his or any other person having registered or refrained from being registered, or having induced some other person to register or to refrain from being registered; ^{Receipt of bribe.}
- (c) Every person who, before or during the sittings, provides or furnishes drink or other entertainment at his own expense, or at the expense of any other person, to any meeting of persons assembled for promoting the registration of voters, or pays, or promises, or engages, to pay for such drink or other entertainment; except only that nothing herein contained shall extend to any drink or other entertainment furnished to any such meeting by or at the expense of any person at his usual place of residence when such residence is a private house, unless where the drink or other entertainment is given or supplied for the purpose of procuring or inducing any person to be, or to agree to be, or to refrain from being or to agree to refrain from being registered; ^{Treating.}
- (d) Every person who, before or during or after the sittings, by himself or by or with any person, or by any other ways or means on his behalf, gives, or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expenses incurred, or gives any ticket or order, for any meat, drink, refreshment or provision to or for any person, in order to induce such person to be, or for being, or to refrain from being, registered, or for the purpose of in any way influencing any other person to be, or to refrain from being registered; ^{Providing refreshments.}
- (e) Every person who hires or promises to pay or pays for a horse, team, carriage, cab, boat, vessel or vehicle, to convey a person intending to apply or applying to be registered or registered to or near or from or on the way to or from the place of registration, or who, by himself or by any person on his behalf, pays the travelling or other expenses of a person in going to or returning from any such sittings; ^{Hiring teams, etc.}
- (f) Every person who provides or furnishes conveyance or transportation by railway, boat or vessel free of charge or at diminished rates to a person intending to apply or applying to be registered or registered to or near or from or on the way to or ^{Railway transportation.}

from the city or place of registration, and whether passes or tickets or the like are or are not supplied;

Personation.

(g) Every person who applies to be registered in the name of another person, whether such name be that of a person living or dead, or of a fictitious person, or who, having been once registered, applies at any time after such registration and before the election to be again registered under this Act either in the same or in another electoral district, except as authorized by section 3 of this Act;

Aiding and abetting.

(h) Every person who, directly or indirectly, aids or abets, counsels or procures the commission of the offence described in the preceding clause of this subsection;

Fraudulent registration.

(i) Every person who wilfully applies for registration or who registers at any such sittings knowing that he has not the right to be registered;

Procuring fraudulent registration.

(j) Every person who, directly or indirectly, wilfully abets, induces or procures any person to apply for registration or to be registered at any such sittings, knowing that such person has not the right to be registered.

Personation.

(2) An offence under clause g of subsection one shall constitute the offence of personation.

Penalty.

(3) Every person guilty of an offence against the provisions of this section shall incur a penalty of not less than \$20 nor more than \$100 for each offence, and shall also be disqualified from being entered or registered as a voter, under this or any other Act, and from having his name retained on any voters' list as a voter, or from voting at any election for three years thereafter.

Striking off names on conviction.

(4) The Judge of the county or district court, on the complaint of anyone, whether a voter or not, at any time after the conviction of such person, may in a summary manner, and on proof of the conviction, strike the name of such person from any voters' list upon which his name is entered for any polling subdivision within the jurisdiction of the Judge, and the clerk of the peace, or other officer having the custody of the voters' list, shall attend the Judge when required so to do for the purpose of having the name of such person struck off as aforesaid. 7 Edw. VII. c. 5, s. 37.

Tampering with books, lists, etc.

38.—(1) Any person who wilfully or maliciously destroys, injures or obliterates or wilfully and maliciously causes to be destroyed, injured or obliterated a book, list, certificate, oath, affidavit or other document made, prepared or drawn out according to or for the purpose of meeting the

requirements of this Act, or any of them, shall incur a penalty of \$2,000, and shall be imprisoned for a period not exceeding twelve months. Penalty.

(2) Any person who aids, abets, counsels or procures the commission of any violation of this Act, as in this section mentioned, shall incur a penalty of \$2,000, and shall be imprisoned for a period not exceeding twelve months. Aiding and abetting. 7 Edw. VII. c. 5, s. 38.

39. Any person appointed a registrar or registry clerk who refuses to accept office or who, after accepting the same, refuses or neglects to take and subscribe the prescribed oath or to perform the duties of the office, for his neglect or refusal, if appointed a registrar, shall incur a penalty of \$100, and if a registry clerk, a penalty of \$50. Penalty for refusing to act as registrar or registry clerk. 7 Edw. VII. c. 5, s. 39.

40. Every registrar or registry clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act, not being an offence under section 38, shall forfeit to His Majesty the sum of \$200, and to any person aggrieved by such misfeasance, act or omission, a like sum of \$200. Penalty for misconduct. 7 Edw. VII. c. 5, s. 40.

41. A commissioner for taking affidavits, a notary public or a justice of the peace who falsely signs an affidavit to be used under this Act, certifying or stating that such affidavit was sworn before him, or who signs it prior to the same being signed by the person purporting to swear the same or otherwise than in the presence of the deponent, shall forfeit his office, and shall also incur a penalty of not less than \$50 and not more than \$200, and be liable to imprisonment for any period not exceeding three months with or without hard labour. Penalty for falsely signing affidavits or declarations. 7 Edw. VII. c. 5, s. 41.

42.—(1) Any penalty, where imprisonment may not be imposed, mentioned in the next preceding four sections, may be recovered, with costs, by any person suing for the same in any court of competent jurisdiction. Recovery of penalties.

(2) Actions for penalties incurred under this Act shall be tried by a Judge without a jury. Actions to be tried without a jury. 7 Edw. VII. c. 5, s. 42.

COMPENSATION OF OFFICERS.

43.—(1) For their services under this Act the officers employed shall be entitled to be paid as follows: A registrar for each sittings at which he personally attends and acts as registrar and each member of the Board of Appeal for each day he attends a sittings thereof, \$10; a registry clerk for each day he attends and acts as such, \$5. Fees of officers.

How paid.

(2) Such sums shall be paid by the treasurer of the city upon the presentation of a certificate of the registrar approved by the Chairman of the Board.

Allowance to chairman.

(3) The Chairman shall be paid a further sum of \$10 for his services hereunder, such sum to be paid by the Province. 7 Edw. VII. c. 5, s. 43; 3-4 Geo. V. c. 18, s. 5 (2).

SUPPLY OF COPIES OF ACTS.

Copies of Acts
to be trans-
mitted with
writ.
Rev. Stat.
c. 9.

44. Where an election is to be held, there shall be sent to the returning officer with the writ of election such a number of copies of this Act and of *The Punishment for Personation Act*, and of any amendments which may be made to the said Acts, with full indexes thereto, as will be sufficient to supply the returning officer and every registrar and registry clerk with one copy at least, and there shall be sent at the same time to the said returning officer such additional number of copies of the last mentioned Act, and any amendments thereto, as will be sufficient to supply each deputy returning officer with at least one copy thereof. 7 Edw. VII. c. 5, s. 44.

SCHEDULE OF FORMS.

FORM 1.

(Section 5.)

APPOINTMENT OF REGISTRAR.

To K. L. (*Insert his residence and legal addition.*)

Know you that under the provisions of *The Manhood Suffrage Registration Act*, you have been appointed a Registrar by the Board of Manhood Suffrage Registrars for

Given under my hand at the City of _____, this _____ day of
19 ____ A. B.,
Chairman.

7 Edw. VII. c. 5, Form I.

FORM 2.

(Section 6.)

OATH OF REGISTRAR.

I, the undersigned, Registrar of Manhood Suffrage Voters for part of the Electoral District of _____, solemnly swear (*or if the Registrar is one of the persons permitted by law to affirm solemnly affirm*) that I will act faithfully in my said capacity of Registrar without partiality, fear, favour or affection. So help me God.

Sworn, etc.

K. L.,
Registrar.

7 Edw. VII. c. 5, Form 2.

FORM 3.

(Sections 13, 27.)

APPOINTMENT OF REGISTRY CLERK.

To *M. N.* (*Insert his residence and legal addition.*)

Know you that in my capacity of Registrar of Manhood Suffrage Voters for the group of polling subdivisions composed of polling subdivisions Nos. 1, 2, 3, 4 and 5 of the Electoral District of _____, I do hereby appoint you to be Registry Clerk for the said polling subdivisions.

Given under my hand at the City of _____, this _____ day of _____, 19 ____.

K. L.,
Registrar.

7 Edw. VII. c. 5, Form 3.

FORM 4.

(Sections 13, 27.)

OATH OF REGISTRY CLERK.

I, the undersigned, appointed Registry Clerk of Manhood Suffrage Voters for part of the Electoral District of _____ solemnly swear (*or if the Clerk is one of the persons permitted by law to affirm solemnly affirm*) that I will act faithfully in my capacity of Registry Clerk; and also in that of Registrar of Manhood Suffrage Voters if required to act as such according to law, without partiality, fear, favour or affection. So help me God.

Sworn, etc.

M. N.,
Registry Clerk.

7 Edw. VII. c. 5, Form 4.

FORM 5.

(Section 17.)

FORM OF INDEX BOOK FOR VOTERS' LIST.

(First page.)

ELECTORAL DISTRICT OF

Manhood Suffrage Voters' List for Elections to Legislative Assembly.

POLLING SUBDIVISION No.

Comprising (*Giving the limits.*)

NAME.	NUMBER OF HOUSE.	STREET OR OTHER DESCRIPTION.	OCCUPATION.

(Form for second and subsequent pages.)

Continuation of POLLING SUBDIVISION No. .

NAME.	NUMBER OF HOUSE.	STREET OR OTHER DESCRIPTION.	OCCUPATION.

7 Edw. VII. c. 5, Form 5.

FORM 6.

(Section 21.)

ORDER FOR THE ATTENDANCE OF WITNESSES BEFORE THE BOARD OF APPEAL.

To (a)

Greeting:

You (b) are hereby required to attend before the Board of Appeal for the Registration of Manhood Suffrage Voters at in the of on (c) the day of 19 . at the hour of of the clock, in the noon, to testify to all matters and things which you know in the matter of the appeal of (d) of No. , on street, in this (e) (f) against the decision of the Registrar of the Registration District, No. , respecting the application of (g) of No. on street in the (e) (f) to be registered as a Manhood Suffrage Voter, which appeal is to be then tried, and so from day to day until the appeal is disposed of, and (*if the witness is required to produce documents*) that you bring with you and produce at the said time and place (*set out the documents to be produced*).

Dated at this day of 19 .

NOTES.—(a) Insert here the name of the witness, or names of the witnesses.

(b) If more than one witness, add "and each of you."

(c) Insert here the day of the week.

(d) Insert here the name of the appellant.

(e) Insert here "city" or "town" as the case may be.

(f) State here the occupation of the party or parties.

(g) Insert here the name of the person whose application for registration was allowed or rejected by the Registrar, and which is the subject of the appeal.

7 Edw. VII. c. 5, Form 6.

FORM 7.
(Section 17.)

FORM OF OATH TO BE TAKEN BY A MANHOOD SUFFRAGE VOTER APPLYING FOR REGISTRATION IN THE POLLING SUBDIVISION IN WHICH HE RESIDES.

1. You swear (a) that your name is (b)
and that you are by occupation a (c)
2. That you are not a citizen or a subject of any foreign country.
3. That you are a British subject, and are of the full age of 21 years..
4. That you have resided within Canada for the twelve months next preceding the (d) day of 19 (e)
5. That you are now, and were on the said day, and for three months next preceding the same, a resident of, and had your home in, this municipality.
6. That you now reside at (f)
7. That you are not, as you believe, entered on the revised list of voters for this municipality to be used at this election, as entitled to vote at both municipal elections and elections to the Legislative Assembly, nor have you been entered, or registered, on any list of persons entitled to vote at this election under which entry or registration you can vote in any other municipality in the Province at this election, and you are, as you believe, entitled to vote thereat. So help you God. (g)

.....
Registrar.

And in the cases of the Cities of Toronto and Hamilton, and of any other municipality which may hereafter be divided into two or more Electoral Districts, and in any municipality the several parts of which are situated in two or more Electoral Districts, add the following clause:—

8. That you are now, and were on the said day and for the thirty days next preceding the same a resident of and had your home within the territory comprising this electoral district.

Where a candidate or an agent for a candidate or political organization present under Section 25 desires this clause to be added, or the Registrar deems such addition expedient, add:—

- A. That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to promise to vote, or to apply for registration as a voter, or for loss of time, travelling expenses, hire of team, or any other service connected therewith. So help you God. (g)

.....
Registrar.

NOTES.—(a) If the applicant is a person who may by law affirm, then for "swear substitute "solemnly affirm."

(b) Insert here the full name of the applicant.

(c) Insert here the occupation of the applicant, or if the applicant has no occupation, state the fact.

(d) Insert here the date of the FIRST sittings held for the registration of voters.

(e) In case the applicant is a person to whom subsection 2 of section 2 applies, insert the words following: "except occasionally or temporarily (or as a member of a permanent militia corps enlisted for continuous service, or on service as a member of the active militia or as a student in attendance at an institution of learning in the Dominion of Canada that is to say (here name institution) as the case may be)."

(f) Insert here the street and number of the house where the applicant resides if it has a street number, and if it has not then insert a brief description that will define its locality.

(g) Where paragraph A is omitted the Registrar will sign above this paragraph; where it is inserted he will sign below it.

FORM 8.

(Section 2, ss. 2, and s. 17.)

OATH IN CASE OF STUDENT OR MEMBER OF PERMANENT MILITIA CORPS
OR VOTER ON SERVICE AS A MEMBER OF THE ACTIVE MILITIA.

1. You swear (a) that your name is (b), and that you are by occupation (c).
2. That you are a British subject and not a citizen or a subject of any foreign country.
3. That you are of the full age of 21 years.
4. That you are a student in attendance at the _____ (or a member of a permanent militia corps enlisted for continuous service at _____), or on service as a member of the active militia at _____ as the case may be, and as such a resident of the municipality of _____ ;
5. That you have resided in Canada for the twelve months next preceding the (d) _____ day of _____ 19 _____.
6. That you now reside at (e).
7. That you are now and were on the last mentioned day and for the thirty days preceding the same as such student (or member of a permanent militia corps or member of the active militia on service as the case may be) a resident of this electoral district.
8. That you are not registered upon and could not have been and were not entitled to be registered or entered on any other list of persons entitled to vote at elections for the Legislative Assembly.
9. That you are as you believe entitled to vote at this election. So help you God.

.....
Registrar.

And in the cases of the Cities of Toronto and Hamilton, and of any other municipality which may hereafter be divided into two or more Electoral Districts, and in any municipality the several parts of which are situated in two or more Electoral Districts, add the following clause:—

10. That you are now, and were on the said day and for the thirty days next preceding the same a resident of and had your home within the territory comprising this electoral district.

Where a candidate or an agent for a candidate or political organization present under Section 25 desires this clause to be added or the Registrar deems such addition expedient, add:—

- A. That you have not received anything, nor has anything been promised you, either directly or indirectly, either to induce you to promise to vote, or to apply for registration as a voter, or for loss of time, travelling expenses, hire of team, or any other service connected therewith. So help you God (f).

.....
Registrar.

NOTES —(a) If applicant may by law affirm, for "swear" substitute "solemnly affirm."
 (b) Insert full name of applicant.
 (c) Insert occupation of applicant.
 (d) Insert date of FIRST sittings for registration.
 (e) Insert street and house number of applicant's residence or other description of same that will define its locality.
 (f) Where paragraph A is omitted the registrar will sign above this paragraph; where it is inserted he will sign below it.

FORM 9.

(Sections 3 and 17.)

FORM OF OATH TO BE TAKEN BY A MANHOOD SUFFRAGE VOTER ON
APPLYING FOR REGISTRATION UNDER SECTION 3.

1. You swear (a) that your name is (b)
and that you are by occupation a (c)
2. That you are a British subject and not a citizen or a subject
of any foreign country, and are of the full age of 21 years.
3. That you have resided within Canada for the twelve months
next preceding the (d) day of 19 (e)
4. That you are now, and were on the said day, and for the three
months next preceding the same, a resident of, and had your home
in, this municipality.
5. That you now reside at (f)
6. That your name is entered on the revised voters' list for the
municipality to be used at this election, as entitled to vote at both
municipal elections and elections to the Legislative Assembly, but
that you are not now entitled to vote at this election in respect of
that qualification.
7. That save as aforesaid you have not been entered or registered
on any list of persons or voters entitled to vote at this election under
which entry or registration you can vote in any other municipality
in Ontario at this election, and you are as you believe entitled to
vote thereat. So help you God. (g).

.....
Registrar.

*And in the cases of the cities of Toronto and Hamilton and of any
other municipality which may hereafter be divided into two or more
electoral districts and in any municipality the several parts of
which are situated in two or more electoral districts, add the fol-
lowing clause:—*

8. That you are now and were on the said day and for the thirty
days next preceding the same a resident of and had your home
within the territory comprising this electoral district.

*When an agent for a candidate or political organization present,
under Section 25, desires this clause to be added, or the Registrar
deems such addition expedient, add:—*

- A. That you have not received anything, nor has anything been
promised you, either directly or indirectly, either to induce you to
promise to vote or to apply for registration as a voter, or for loss
of time, travelling expenses, hire of team or any other service con-
nected therewith. So help you God. (g)

.....
Registrar.

NOTES.—(a) If the applicant is a person who may by law affirm, then for "swear"
substitute "solemnly affirm."

(b) Insert here the full name of the applicant.

(c) Insert here the occupation of the applicant, or if the applicant has no occupation,
state the fact.

(d) Insert here the date of the first sittings held for the registration of voters.

(e) In case the applicant is a person to whom subsection 2 of section 2 applies, insert
the words following: "except occasionally or temporarily (or as a member of a perman-
ent militia corps enlisted for continuous service or on service as a member of the active
militia or as a student in attendance at an institution of learning in the Dominion
of Canada, that is to say (here name institution) as the case may be)."

(f) Insert here the street and number of the house where the applicant resides if it
has a street number, and if it has not then insert instead a brief description that will
define its locality.

(g) Where paragraph A is omitted the Registrar will sign above this paragraph:
where it is inserted he will sign below it.

FORM 10.

(Section 22.)

The Board of Appeal for the Registration of Manhood Suffrage Voters for the _____ of _____ have on appeal given certificates to the following persons, upon which such persons are entitled to vote at this election in the following polling subdivisions of the said (municipality or electoral district, as the case may be).

POLLING SUBDIVISION No. .

NAME.	NUMBER OF HOUSE, LOT OR BLOCK.	STREET OR OTHER DESCRIPTION.	OCCUPATION.

.....
Chairman.

7 Edw. VII. c. 5, Form 10.

FORM 11.

(Section 22.)

The Board of Appeal for the Registration of Manhood Suffrage Voters for the _____ of _____ have on appeal, struck off the names of the following persons from the list of Manhood Suffrage Voters in the following polling subdivisions in the said (municipality or electoral district, as the case may be).

POLLING SUBDIVISION No. .

NAME.	NUMBER OF HOUSE, LOT OR BLOCK.	STREET OR OTHER DESCRIPTION.	OCCUPATION.

.....
Chairman.

7 Edw. VII. c. 5, Form 11.

FORM 12.
(Section 20.)

NOTICE OF APPEAL AGAINST THE DECISION OF A REGISTRAR.

To the Registrar of Registration District No. .
Take notice that I hereby appeal to the Board of Appeal for the
Registration of Manhood Suffrage Voters against the (a)
by the Registrar of the above Registration District of the applica-
tion of (b) of No. on
street in this (c) to be registered as a Manhood
Suffrage Voter.
Dated this day of , 19 .

of No. on street,
(c).....

NOTES.—(a) Insert here "allowance" or "rejection" (as the case may be).
(b) Insert here the name of the party or parties whose application for registration was
allowed or rejected by the Registrar. Notice must also be given to the party whose
application has been allowed by the Registrar and whose name is sought to be struck
off the registration list.
(c) Insert here the occupation of the party or parties.

7 Edw. VII. c. 5, Form 12.

FORM 13.
(Section 19.)

FORM OF AFFIDAVIT OF QUALIFICATION FOR REGISTRATION OF ABSENTEE
MANHOOD SUFFRAGE VOTER.

I, (a) , of the City of ,
in the County of (b) make oath as follows:—
1. That I am (or is) a British subject and not a
citizen or a subject of any foreign country.
2. That I am (or is) of the full age of 21 years.
3. That I am (or has) resided in Canada for the
twelve months next preceding the (c) day of ,
19 (d).
4. That I am (or the said is) now and was on the
said day and for three months next preceding the same a resident
of and had my (or his) home in this municipality.
5. That I am (or the said is) not as I believe
entered on the list of voters for this municipality to be used at this
election as entitled to vote at both municipal elections and elec-
tions to the Legislative Assembly, nor have I (or nor has the said
) been entered on any list of persons entitled to vote
at this election under which entry or registration I (or the said
) can vote in any other municipality in Ontario
at this election and that I am (or the said is) as I
believe entitled to vote thereat.
Sworn before me at the City of
in the County of
this day of
19 .

A Commissioner, etc.

NOTES.—(a) Set out names in full.
(b) If deponent is by law entitled to affirm instead of "make oath" insert "solemnly
affirm."
(c) Insert here the date of the FIRST sittings held for registration.
(d) In case the applicant has been temporarily absent for any purposes allowed by law
insert the following words "except temporarily or occasionally in the prosecution of
my (or his) occupation of (mentioning, as the case may be, as a lumberman or a mariner or
a fisherman or a member of a permanent militia corps enlisted for continuous service or a
student in attendance as a student at an institution of learning in the Dominion of Canada,
naming the institution)."

7 Edw. VII. c. 5, Form 13.

FORM 14.

(Section 19.)

FORM OF SECOND AFFIDAVIT TO BE FILED ON APPLICATION FOR
REGISTRATION OF ABSENTEE VOTER.

I, _____, of the City of _____,
in the County of _____, make oath:—

1. That I am (or _____ is) the person applying
to be registered as a Manhood Suffrage Voter in the Electoral
District of _____, in the City of _____

2. I am (or the said _____ is) unable to attend the
sittings or any of them held for registration of Manhood Suffrage
Voters for the said Electoral District for the election of a member
to the Legislative Assembly to be held on the _____ day of
_____, 19____, for the following reasons (*here set out
the reasons fully, such as sickness, physical disability, or temporary
absence from the county in which the City is situate in the neces-
sary pursuit of business, etc., as in clauses "a" and "b," section
19.*)

3. The facts above set forth are true according to my information
and belief, and such information and belief is founded upon the
following facts (*a*) (*here set out concisely the facts from which de-
ponent derives his information*).

Sworn before me this _____

day of _____

in the County of _____

19____

A Commissioner

NOTE—(*a*) If this affidavit is made by the absentee in person the last paragraph
may be omitted.

CHAPTER 8.

An Act respecting Elections of Members of the
Legislative Assembly.

HIS MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Ontario,
enacts as follows:—

MISCELLANEOUS.

SHORT TITLE.

1. This Act may be cited as *The Ontario Election Act*, Short title.
8 Edw. VII. c. 3, s 1.

INTERPRETATION.

2. In this Act,—

Interpretation.

(*a*) “Candidate at an election” and “candidate” shall mean and include a person elected to serve in the Assembly, and a person who is nominated as a candidate at an election, or is declared by himself or by others to be a candidate, on or after the day of the issue of the writ, or after the dissolution or vacancy in consequence of which the writ has been issued. “Candidate.”

(*b*) “Corrupt practice” shall mean and include bribery and an act declared to be a corrupt practice by this or any other Act of this Legislature or recognized as such by the common law of Parliament. “Corrupt practice.”

(*c*) “County” shall include a district. “County.”

(*d*) “County Court” shall include a district court. “County Court.”

(*e*) “Election” shall mean an election of a member to serve in the Assembly. “Election.”

(*f*) “Election Court” shall mean and include a court constituted under *The Ontario Controverted Elections Act* for the trial of a petition and a Summary Trial Court constituted under that Act. “Election Court.”
Rev. Stat. c. 10.

(*g*) “Electoral district” shall mean a county or other place in or portion of Ontario, entitled to return a member to the Assembly. “Electoral District.”

(*h*) “Form” shall mean a form in Schedule A to this Act. “Form.”

"Judge of the county court."

(i) "Judge of the County Court" shall mean the Judge of the county or district court, and where there are two or more judges, the senior judge or a junior judge in case of the illness or absence of the senior judge or where the senior judge requests him to act.

"Local municipality."

(j) "Local municipality" shall mean and include a city, town, township or village, as the case may be.

"Official agent."

(k) "Official agent" shall mean the agent appointed by a candidate under section 203.

"Polling list."

(l) "Polling list" shall mean the list of voters furnished to a deputy returning officer by the returning officer in accordance with the provisions of this Act.

"To vote."

(m) "To vote" shall mean to vote at an election.

"Voters' lists."

(n) "Voters' list" shall mean a voters' list under the provisions of *The Ontario Voters' Lists Act*. 8 Edw. VII. c. 3, s. 2.

CLERK OF THE CROWN IN CHANCERY.

Clerk of the Crown in Chancery.

3. The Clerk of the Assembly shall be *ex-officio* Clerk of the Crown in Chancery, and shall discharge all the duties which by any Statute, law, or usage ought to be, or have heretofore been discharged or performed by the Clerk of the Crown in Chancery. 8 Edw. VII. c. 3, s. 3.

EFFECT OF IRREGULARITIES.

Irregularities not affecting result.

4. No election shall be declared invalid by reason of,—

- (a) any irregularity on the part of the returning officer or in any of the proceedings preliminary to the poll, or
- (b) a failure to hold a poll at any place appointed for holding a poll, or
- (c) non-compliance with the provisions of this Act as to the taking of the poll or the counting of the votes, or as to limitations of time, or
- (d) any mistake in the use of the Forms contained in Schedule A,

if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, and that such irregularity, failure, non-compliance or mistake did not affect the result of the election. 8 Edw. VII. c. 3, s. 4.

ELECTION INTERRUPTED.

5. If by reason of riot or other emergency, an election, or the voting at a polling place, is not commenced on the proper day, or is interrupted after being commenced, and before the lawful closing thereof, the returning officer or deputy returning officer, as the case may be, shall hold or resume the election or polling on the following day, at the hour of nine o'clock in the forenoon, and continue the same from day to day if necessary, until a fair opportunity for nominating candidates has been given, or, in the case of polling, until the poll has been opened without interruption and with free access to voters for eight hours in all. 8 Edw. VII. c. 3, s. 5.

Provision
when election
or polling is
not commenced
or is inter-
rupted.

OATHS AND AFFIDAVITS.

6.—(1) Except where otherwise provided, any oath or affidavit for the purposes of this Act may be sworn before a justice of the peace, a commissioner for taking affidavits or a notary public.

Who may take
affidavits.

(2) The returning officer shall have power to administer any oath required by this Act with respect to the election and the deputy returning officer and poll clerk may administer any oath except such as is required to be administered to the returning officer.

Oaths, who to
administer.

(3) Every person before whom it is herein provided that an oath or affidavit may be taken, shall administer the same gratuitously. 8 Edw VII. c. 3, s. 6.

No charge for
administering
oaths, etc.

AGENTS.

7. A person who, by section 12, is disqualified and incompetent to vote, or who within eight years has been found guilty by a competent tribunal of a corrupt practice or reported for a corrupt practice by an Election Court, shall not act as agent for a candidate at an election; and any person violating this enactment shall incur the same penalty as if he had voted at the election. 8 Edw. VII. c. 3, s. 7.

Certain persons
disqualified
from acting as
agents.

Penalty.

8. A candidate may himself undertake the duties which any agent of his, except his official agent, might have undertaken, if appointed, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may in pursuance of this Act attend, except at the marking of a ballot under section 100. 8 Edw. VII. c. 3, s. 8.

Right of
candidates
to undertake
duties of
agent.

9. Where in this Act expressions are used requiring or authorizing any act to be done in the presence of the agents

Non-attend-
ance of agents.

of the candidates, the non-attendance of any agent shall not invalidate the act done. 8 Edw. VII. c. 3, s. 9.

PERSONS NOMINATED WITHOUT CONSENT.

Non-liability of person nominated without consent.

10. Nothing in this Act shall impose any liability upon any person nominated as a candidate or declared to be a candidate by others without his consent, unless he has afterwards given his assent to such nomination or declaration, or has been elected. 8 Edw. VII. c. 3, s. 10.

QUALIFICATION OF CANDIDATE.

Who may be candidates.

Rev. Stat. c. 11.

11. Any male person of the full age of twenty-one years and a British subject by birth or naturalization resident in Ontario, who is not disqualified by *The Legislative Assembly Act* or by any other Act, shall be qualified to be a candidate. 8 Edw. VII. c. 3, s. 11.

QUALIFICATION OF VOTERS.

WHO SHALL NOT VOTE.

Persons disqualified from voting.

12.—(1) Judges of the Dominion and Provincial Courts, officers of the Customs of the Dominion of Canada, clerks of the peace, crown attorneys, postmasters in cities and towns, stipendiary magistrates, police magistrates in cities and towns having a population of 5,000 or more, and officers employed in the collection of duties payable to His Majesty in the nature of duties of excise, shall be disqualified and incompetent to vote.

Penalty.

(2) If any person mentioned in this section votes, he shall incur a penalty of \$2,000, and his vote shall be null and void. 8 Edw. VII. c. 3, s. 12.

Disqualification of certain officers.

13.—(1) No returning officer or election clerk shall be entitled to vote; but this provision shall not affect the duty of the returning officer to give a casting vote.

Persons employed by candidates for reward.

(2) No person shall be entitled to vote who, at any time, before or during the election, has been employed as counsel, agent, solicitor or clerk or in any other capacity by a candidate or by any person at or in reference to the election, or for the purpose of forwarding the same, and who has received or expects to receive, either before, during or after the election, from any candidate or from any person, for acting in such capacity, any sum of money, fee, office, place or employment, or any promise, pledge or security therefor.

Saving as to election officers.

(3) The next preceding subsection shall not apply to any person who performs any official duty in connection with the election and who receives the fees to which he is entitled. 8 Edw. VII. c. 3, s. 13.

14. No woman shall be entitled to vote. 8 Edw. VII. c. 3, s. 14. Women not to vote.

15. No person shall be entitled to be entered on the voters' list, or shall vote, who is a prisoner in a gaol or prison undergoing punishment for a criminal offence, or is a patient in a hospital for the insane, or is maintained in whole or in part as an inmate receiving charitable support or care in a municipal house of refuge or house of industry. 8 Edw. VII. c. 3, s. 15. Disqualification of convicts, insane persons, etc.

WHO MAY BE ENTERED ON LISTS.

Revised Voters' List of a Municipality.

16. Every man shall be entitled to be entered on the voters' list prepared under Parts I. or II. of *The Ontario Voters' Lists Act*, who Qualification of voters. Entry on voters' list under Rev. Stat. c. 6.

(a) is of the full age of twenty-one years, or will be of that age within 30 days after the day fixed for hearing appeals to the Judge under that Act;

(b) is a British subject by birth or naturalization;

(c) is not disqualified under this Act or otherwise by law prohibited from voting;

(d) has resided in Canada for the nine months next preceding the time fixed by statute or by by-law authorized by statute for beginning to make the assessment roll of the municipality in which he resides, or has resided within Canada for the twelve months next preceding the time up to which application, complaint or appeal to enter his name on such list may be made to the Judge under *The Ontario Voters' Lists Acts*;

Rev. Stat. c. 6.

(e) was in good faith at the time of beginning to make the assessment roll or for making application, complaint or appeal to the Judge, as the case may be, a resident of and domiciled in the municipality on the list of which he is to be entered. 8 Edw. VII c. 3, s. 16.

List of Voters prepared under "The Manhood Suffrage Registration Act."

17.—(1) Every man shall be entitled to be entered on the list of voters prepared under *The Manhood Suffrage Registration Act*, who Entry on list under Rev. Stat. c. 7.

(a) is of the full age of twenty-one years;

(b) is a British subject by birth or naturalization;

(c) is not disqualified under this Act or otherwise by law prohibited from voting;

(d) has resided in Canada for the twelve months next preceding the day on which the first sittings of the registrars of manhood suffrage voters was held for the preparation of the lists of voters under *The Manhood Suffrage Registration Act*;

Rev. Stat.
c. 7.

(e) was in good faith on that day and for the three months next preceding the same a resident of and domiciled in the city or town on the list of which or part of which he is to be entered;

and in any municipality divided into two or more electoral districts and in any municipality, parts of which are situate in two or more electoral districts who

(f) was in good faith on that day and for the next preceding thirty days a resident of and domiciled within the electoral district.

Permanent
militia,
militia on
service and
students.

(2) Members of a permanent militia corps enlisted for continuous service, members of the active militia on service, and students in attendance at an institution of learning who are during such service or attendance residents of a city or town, and who are not entitled to be or could not have been and are not at the time of their application for registration, registered or entered upon any other list of persons entitled to vote at elections for the Assembly shall be entitled to be registered as manhood suffrage voters in the city or town, if otherwise qualified according to the provisions of subsection 1. 8 Edw. VII. c. 3, s. 17.

Voters Lists' prepared for territory without municipal organization.

Voters on lists
prepared for
unorganized
territory
under Rev.
Stat. c. 6.

18. In those parts of Ontario without municipal organization, as defined by *The Ontario Voters' Lists Act*, every man shall be entitled to be entered on the voters' list prepared under Part III. of that Act, who

(a) is of the full age of twenty-one years or will be of that age within 30 days after the day fixed for hearing appeals to the Judge under the said Act;

(b) is a British subject by birth or naturalization;

(c) is not disqualified under this Act or otherwise by law prohibited from voting;

(d) has resided in Canada for the nine months preceding the day for commencing to prepare the list on which he is to be entered.

- (e) is a resident of and domiciled in the territory for which the list is being prepared. 8 Edw. VII. c. 3, s. 18.

WHO MAY VOTE.

19. Subject to the provisions of sections 20 and 21 of this Act and to the provisions of sections 24 and 68 of *The Ontario Voters' Lists Act* and section 33 of *The Manhood Suffrage Registration Act*, every man whose name is entered on either of the lists prepared under those Acts, shall be entitled to vote if he is at the time of tendering his vote a resident of and domiciled in the electoral district and has resided continuously therein from the time when the list was certified by the Judge of the County Court or when the list under *The Manhood Suffrage Registration Act* was prepared, as the case may be, but no one who has been entered upon a voters' list as a person who will attain the age of 21 years within 30 days after the day fixed for hearing appeals to the Judge, under *The Ontario Voters' Lists Act* shall be entitled to vote until he has attained the age of 21 years. 8 Edw. VII. c. 3, s. 19.

Clergymen and School Teachers.

20. Where the name of a clergyman or of a high or public or separate school teacher is entered on any voters list, prepared under *The Ontario Voters' Lists Act* and proper to be used at an election for an electoral district, he shall be entitled to vote at such election, although he does not at the time of the election reside in such electoral district if he has not ceased to reside therein for more than three months next preceding the election, is not entitled to vote in any other electoral district, is otherwise qualified and is still a resident of Ontario. 8 Edw. VII. c. 3, s. 20.

Temporary Absence and Domicile.

21.—(1) A person may be resident in a municipality within the meaning of this Act notwithstanding occasional or temporary absence or absence as

- (a) a member of a permanent militia corps enlisted for continuous service or on service as a member of the active militia; or

- (b) a student in attendance at an institution of learning in the Dominion of Canada.

(2) Such absence shall not disentitle him to be entered on the assessment roll or entered or registered on a list of voters as a voter or to vote.

(3) No person shall be deemed to be domiciled within the meaning of sections 16 and 17 in a municipality in which

he is in attendance as a student at an institution of learning, if he has a place of residence in another municipality and is entered or is entitled to be or could have been entered on the voters' list thereof. 8 Edw. VII. c. 3, s. 21.

Indians.

Unenfranchised Indians. 22.—(1) An unenfranchised Indian of whole or part Indian blood residing or having his domicile among Indians or on an Indian Reserve, shall not be entitled to have his name entered on the voters' list or to vote.

Oath. (2) A person alleged by a candidate, or the agent of a candidate, to be an Indian or a person of part Indian blood, if required by the candidate or his agent, or by the deputy returning officer, shall take one of the following oaths in addition to any other oath required of a voter:—

You swear (*or affirm*) that you are not an Indian or a person having part Indian blood.

Or, at his option,—

You swear (*or affirm*) that you are an enfranchised Indian.

Or, at his option,—

You swear (*or affirm*) that you do not reside nor is your domicile among Indians or on an Indian Reserve.

8 Edw. VII. c. 3, s. 22.

PROCEEDINGS PRELIMINARY TO ELECTIONS.

DATES FOR NOMINATION AND POLLING.

Appointment of day for holding. 23.—(1) Where an election is to be held the Lieutenant-Governor in Council may appoint a day, not more than twenty nor less than sixteen days from the date of the writs of election for the nomination of candidates and the seventh day after the nomination day shall be the day on which polling shall take place where a poll is granted.

Date to be same in all electoral districts. (2) In the case of a general election the nominations shall be held on one and the same day for all electoral districts and the respective days for the nomination and for the polling shall be stated in the proclamation for the election.

Writs to bear date on same day. (3) The writs for a general election shall be dated on the same day.

Writs to state dates of nomination and polling. (4) A writ of election shall state the respective days for the nomination and for the polling, and need not name a return day, but shall be returnable forthwith after the execution thereof. 8 Edw. VII. c. 3, s. 23.

Procedure in case of an electoral district returning more than one member and by separate seats. 24.—(1) In an electoral district entitled to return more than one member where the members are to be elected for separate seats, there shall be a separate writ of election for each seat, and the election of a member for each seat shall be a separate election from the election of a member for the

other seat or seats, and shall take place in the same manner and the proceedings therefor and incidental thereto and consequent thereon shall be the same in all respects as if the election of a member for each seat were the election of a member for an electoral district entitled to return only one member, save and except that the same returning officer, election clerk, deputy returning officers, and poll clerks shall conduct the elections for all the seats, and the nomination of candidates and the polling of the votes for all the seats shall take place at the same time and at the same places respectively, and the same ballot box shall be used.

(2) The nominations shall take place in the same manner as if the members to be elected were to be elected for the electoral district, except that candidates shall be nominated separately for each seat.

Manner of nomination.

(3) If a person is nominated for more than one of such seats he may before the close of the nomination elect for which seat he will be a candidate, and failing such election he shall before four o'clock in the afternoon of the second day after the nomination, notify the returning officer in writing for which seat he elects to be a candidate, and if he fails to do so he shall be deemed not to be a candidate and his name shall not be printed on the ballot papers, and if the result is that one candidate only remains in nomination for a seat the returning officer shall return such candidate as duly elected for such seat.

Where candidate nominated for more than one seat.

(4) For each seat there shall be separate ballot papers, on the back of which after the name of the electoral district there shall be added the number or other designation of the seat.

Separate ballot paper for each seat.

(5) A voter shall be entitled to vote for only one candidate for each seat.

Voter to vote for one candidate for each seat.

(6) The returning officer and other election officers shall not be entitled to any greater or other fees than if the election were an election for an electoral district and not for separate seats. 8 Edw. VII. c. 3, s. 24.

Fees of officers.

FORMS, ETC.

Papers and Forms to be sent by Clerk of Crown in Chancery to Returning Officer.

25.—(1) Before any general or other election, the Clerk of the Crown in Chancery shall procure to be printed in conspicuous characters a notice as to secrecy, Form 1, and shall transmit by post to the returning officer of every electoral district, such number of copies as he may deem sufficient to supply every deputy returning officer with five copies, and the deputy returning officer shall post up one 10—s.

Notices as to secrecy to be sent to Returning Officers before elections.

copy in a conspicuous place outside the polling place, and one in a conspicuous place within the polling place, and he shall see that they remain so posted up from the opening to the close of the poll.

(2) The notice may be separated from or added to the directions for the guidance of voters in voting, Form 13.

Supply of
forms by
King's
Printer.

(3) The Clerk of the Crown in Chancery shall also procure from the King's Printer the forms, other than the proclamation of the nomination, prescribed by this Act, for each electoral district in sufficient number for the requirements of the election, the label mentioned in subsection 2 of section 146, and such stationery as may be necessary, and shall send the same to the returning officer forthwith after the issue of the writ. 8 Edw. VII. c. 3, s. 25.

Supply of
poll books
and forms.

26. Immediately after the issue of the writ, the Clerk of the Crown in Chancery shall supply the returning officer with a sufficient number of blank poll-books, Form 2, for the purposes of the election, having regard to the number of polling places within the electoral district containing the following blank forms:

1. Commission of deputy returning officer.

2. Oath of deputy returning officer.

3. Copy of the certificate of the clerk of the municipality showing the time fixed for the assessor to begin to make the assessment roll and the last day on which a complaint could be made to the Judge under *The Ontario Voters' Lists Act*.

Rev. Stat.
c. 6.

4. Commission of poll clerk.

5. Oath of poll clerk.

6. Oath of secrecy.

7. Schedule for "Notes of objections" to ballot papers under section 115.

8. Statement of the poll after counting the ballot papers.

9. Ballot paper account.

10. Oath of deputy returning officer after closing the poll.

11. Oath of poll clerk after closing the poll. 8 Edw. VII. c. 3, s. 26.

Transmission
to Returning
Officers of
copies of this
Act.

27. There shall be transmitted to the returning officer with the writ of election, such number of copies of this Act and of any Acts amending the same, as will be sufficient to supply him and each deputy returning officer with one copy at least; and every copy shall contain an alphabetical index. 8 Edw. VII. c. 3, s. 27.

[As to transmission of copies of the *Manhood Suffrage Registration Act* and *The Punishment for Personation Act*. See *The Manhood Suffrage Registration Act*, s. 44.]

RETURNING OFFICERS.

28. A commission shall not be required for the appointment of a returning officer, but the direction of a writ of election to a person named therein as returning officer shall be a sufficient appointment. 8 Edw. VII. c. 3, s. 28.

Appointment of Returning Officer.

29. Every writ of election shall be addressed to such person, being a resident of the electoral district for which the election is to take place, as the Lieutenant-Governor in Council may appoint. 8 Edw. VII. c. 3, s. 29.

Writ for elections, to whom addressed.

30. If the person to whom the writ is addressed dies or refuses to act, or is absent or incapacitated or unable from any cause to act, the Lieutenant-Governor in Council may appoint some other person to be returning officer. 8 Edw. VII. c. 3, s. 30.

Refusal or incapacity to act.

31. If a writ has been issued to a person whose appointment is afterwards superseded or to a person in whose stead a returning officer has been appointed under the provisions of the next preceding section, a new writ may be issued or the new returning officer, may act under the writ already issued as if the same had been addressed to him, and the validity of the proceedings had or taken under the first appointment shall not be affected by the new appointment; but the new returning officer may appoint a new election clerk and new deputy returning officers, if he thinks fit, in place of the persons, if any, appointed to such offices by the person previously named as returning officer. 8 Edw. VII. c. 3, s. 31.

Where appointment is subsequently superseded.

32.—(1) None of the persons hereinafter mentioned shall be appointed or shall act as returning officer, deputy returning officer, election clerk, or poll clerk:—

Persons excluded from being Returning Officers, etc.

- (a) Members of the Executive Council;
- (b) Members of the Parliament of Canada or of the Assembly;
- (c) Ministers, priests or ecclesiastics under any form or profession of religious faith or worship;
- (d) Judges of Dominion or Provincial Courts;
- (e) Persons who have served as members of the Assembly in the Session next preceding the election, or in the then present Session, if the election takes place during a Session of the Assembly;

(f) Persons who have at any time been found guilty by a competent tribunal of or reported by an Election Court for corrupt practices.

Penalty.

(2) If any such person acts as returning officer, deputy returning officer, election clerk, or poll clerk, he shall incur a penalty of \$200.

Validity of election not affected.

(3) A contravention of this section shall not affect the validity of the election. 8 Edw. VII. c. 3, s. 32.

Exempted persons.

33. None of the persons hereinafter mentioned shall be obliged to act as returning officer, deputy returning officer, election clerk, or poll clerk:—

(a) Physicians and surgeons;

(b) Millers;

(c) Postmasters;

(d) Persons sixty years of age or upwards;

(e) Persons who have previously served as returning officers. 8 Edw. VII. c. 3, s. 33.

Penalty for refusal to act.

34. Every person not disqualified by this Act, who refuses to perform the duty of returning officer after having received the writ of election, shall incur a penalty of \$200; unless, having a right to claim the exemption conferred by the next preceding section, he has claimed exemption by letter setting forth the grounds of such exemption and forwarded to the Clerk of the Crown in Chancery within two days next after the receipt of the writ of election. 8 Edw. VII. c. 3, s. 34.

PROCEEDINGS ON THE RECEIPT OF THE WRIT.

Endorsement on writ.

35. The returning officer shall, on receiving the writ, forthwith endorse thereon the date of its receipt. 8 Edw. VII. c. 3, s. 35.

Oath of Returning Officer.

Oath of returning officer.

36. The returning officer shall, before the nomination day, take and subscribe the oath, Form 3; and a returning officer who refuses or neglects to take and subscribe the oath, shall incur a penalty of \$40. 8 Edw. VII. c. 3, s. 36.

Penalty.

Proclamation by Returning Officer.

Proclamation by returning officer.

37.—(1) The returning officer forthwith after the receipt of the writ shall by proclamation under his hand in the English language, Form 4, declare:—

(a) the place and time fixed for the nomination of candidates;

- (b) the day on which the poll for taking the votes of the voters is to be held in case a poll is granted;
- (c) the polling places fixed by him and the territorial limits to which they respectively apply;
- (d) the time when and the place where he will add up the number of votes given to the several candidates.

(2) The proclamation shall be posted up in the electoral district at least eight days before the nomination day, neither the last day of posting up nor the nomination day being reckoned. 8 Edw. VII. c. 3, s. 37. When proclamation to be posted up.

38. The place for the nomination of candidates shall be the court house, city or town hall or some other public or private building in the most central or the most convenient place for the majority of the voters of the electoral district, and the time appointed for the nomination of candidates shall be from twelve o'clock noon until two o'clock in the afternoon of the day fixed for that purpose. 8 Edw. VII. c. 3, s. 38. Place of nomination.

39.—(1) In a city or town, the proclamation shall be posted up at the city or town hall, and in some public place in each ward, and in other places at the town hall or other public place where the meetings of the municipal council are held, at every post office, and in at least one other public place in every polling subdivision. Places of posting up proclamation.

(2) In territory without county organization it shall not be necessary to post up the proclamation for holding the election at every post office in the electoral district, but it shall be posted up in some public place in the neighbourhood of each place at which a poll is required to be held. 8 Edw. VII. c. 3, s. 39. Places of posting up proclamation in districts.

40. A returning officer refusing or neglecting to cause the proclamation to be posted up as prescribed by this Act shall incur a penalty of \$200. 8 Edw. VII. c. 3, s. 40. Penalty.

41.—(1) Where from any cause the proclamation could not be posted up so as to leave the required delay between the posting up and the nomination day or the returning officer is unable to hold the nomination on the day fixed for that purpose, he may by proclamation under his hand fix another day for the nomination which shall be the nearest day practicable, after allowing the required delay between the posting up of the proclamation and the nomination day. Unforeseen delays provided for.

(2) The proclamation shall be in the like form and shall be posted up in the like manner as provided in section 37. Form of proclamation.

Polling day. (3) The polling day shall be the seventh day after the nomination day.

Report as to cause of postponement. (4) The returning officer shall, with his return, make to the Clerk of the Crown in Chancery a report of the cause which occasioned the postponement of the election. 8 Edw. VII. c. 3, s. 41.

Communication with Pelee Island and Amherst Island may be by telephone. 42. Where an election for an electoral district of which Pelee Island or Amherst Island forms part is to be held between the months of October and April, and the Lieutenant-Governor in Council, is satisfied that communication and travel between Pelee Island or Amherst Island and the main land is likely to be dangerous or to be interrupted he may direct that all necessary instructions and information relating to the election be transmitted by telephone, including information as to the number of votes given for each candidate and as to all other matters relating to the election, so as to enable the returning officer to return the candidate having the majority, or to make such other return as the case requires; and the Lieutenant-Governor in Council may make such order for carrying out the provisions of this section as to him may seem proper. 8 Edw. VII. c. 3, s. 42.

Election Clerks.

Appointment of an election clerk. 43.—(1) The returning officer before the nomination day shall appoint, by a commission under his hand, Form 5, an election clerk.

Case of death or default of election clerk provided for. (2) The returning officer may at any time during the election in the same manner appoint another election clerk if the one so appointed dies or refuses or neglects or is unable to perform his duties.

Duties of election clerk. (3) The election clerk shall assist the returning officer in the performance of his duties and, if the returning officer dies or refuses or is disqualified or unable to perform his duties and has not been replaced by another, shall act in his stead as returning officer. 8 Edw. VII. c. 3, s. 43.

Oath of election clerk. 44. The election clerk shall before entering upon his duties take and subscribe the oath, Form 6. 8 Edw. VII. c. 3, s. 44.

Penalty for refusing to act. 45. A person appointed election clerk, who refuses to accept the office, or who, having accepted it, refuses or neglects to take and subscribe the oath, or to perform the duties of election clerk, shall incur a penalty of \$40. 8 Edw. VII. c. 3, s. 45.

Appointment and oath to be on writ. 46. The appointment and oath of an election clerk shall be either endorsed on or attached to the writ. 8 Edw. VII. c. 3, s. 46.

47. An election clerk whose duty it becomes to act in the stead of the returning officer shall be subject to the same penalties as the returning officer for his neglect or refusal to perform the duties and to all the obligations of that office in like manner as if he had been appointed returning officer, and shall not be required to possess any other qualification or to take the oath, Form 3. 8 Edw. VII. c. 3, s. 47.

Duties and liabilities when acting as returning officer.

Ballot Boxes.

48.—(1) The returning officer shall, on receiving the writ, provide as many ballot boxes as there are polling places within the electoral district.

Ballot boxes to be furnished.

(2) The ballot box shall be made of durable material, provided with lock and key, and so constructed that the ballot paper can be deposited therein, and cannot be withdrawn without unlocking the box.

How made.

(3) If the returning officer fails to provide the ballot boxes, he shall incur a penalty of \$100 in respect of every ballot box which he fails to provide. 8 Edw. VII. c. 3, s. 48.

Penalty on failure to furnish boxes.

49. The property in the ballot boxes, ballot papers, marking instruments, books, papers and documents procured for or used at an election, shall be in His Majesty. 8 Edw. VII. c. 3, s. 49.

Property of the Crown.

50. Where it becomes necessary to use the ballot boxes, the returning officer, two days at least before the polling day, shall deliver one ballot box to every deputy returning officer. 8 Edw. VII. c. 3, s. 50.

Delivery of ballot boxes to deputy returning officers.

51. A deputy returning officer who has not been supplied with a ballot box within the time prescribed in the next preceding section, shall forthwith procure one to be made. 8 Edw. VII. c. 3, s. 51.

Duty of deputy returning officer as to ballot box.

52. After the close of the election the returning officer shall deliver the ballot boxes used in the election to the several clerks of the municipalities in the electoral district and to the clerk of the peace in the case of territory without municipal organization and the boxes shall be preserved by them for use at future elections. 8 Edw. VII. c. 3, s. 52.

Return of ballot boxes to municipal clerks and clerk of peace.

Polling Subdivisions.

53.—(1) In case of failure of the council to divide a municipality into polling subdivisions in accordance with the provisions of *The Municipal Act*, or in case a division has been made and the time for appealing therefrom has not expired, the returning officer shall make the division.

When returning officer to make division.

Rev. Stat. c. 192.

(2) Where the council has divided the municipality into polling subdivisions the returning officer shall not be

When council has divided municipality.

Rev. Stat.
c. 192.

Remuneration
of returning
officer making
division.

required to make any change in the boundaries of a polling subdivision which does not contain a greater number of voters than prescribed by *The Municipal Act*.

(3) If it is necessary for a returning officer to divide a municipality or any part thereof into polling subdivisions, he shall be entitled to a reasonable allowance therefor. 8 Edw. VII. c. 3, s. 53.

Polling Places.

Polling places
in each polling
subdivision.

54.—(1) Subject to the provisions of subsection 3, the returning officer on receiving the writ shall fix and provide at least one polling place for each polling subdivision in the most central or most convenient place for the voters.

Additional
polling places
in discretion
of returning
officer.

(2) A returning officer may in his discretion grant such additional polling places in any polling subdivision as the extent of the subdivision and the remoteness of any body of its voters from the polling place render necessary.

Union of
polling sub-
divisions
in cities.

(3) In a city the returning officer may unite two or more adjoining polling subdivisions and fix one polling place for the united subdivisions, but such united polling subdivision shall not contain more than the number of voters prescribed by *The Municipal Act*.

Rev. Stat.
c. 192.

Cost of polling
places.

(4) In a city the actual cost of each polling place not exceeding \$6, and in other municipalities not exceeding \$4, shall be allowed to the returning officer, and be paid out of the Consolidated Revenue Fund.

Polling place
not to be a
tavern.

(5) The building in which the poll is held shall not be a tavern or place of public entertainment; and there shall be free access to the poll for every voter.

Additional
polling places
in sub-
divisions
where voters
exceed 300.

(6) Where a polling subdivision contains more than the prescribed number of voters the returning officer instead of subdividing it may provide one or more additional polling places near to one another, having regard to the total number of voters in the polling subdivision.

Division to be
according to
initial letter
of voters'
names

(7) Where there are two or more polling places in a subdivision each polling place shall be designated by the initial letters of the surnames of the voters who are to vote in such polling place, in the following manner, that is to say, from A to M inclusive, and from N to Z inclusive, or as may be determined by the returning officer.

Where voters
to vote.

(8) Every voter the initial letter of whose surname is included within the letters of the alphabet designating a polling place shall vote in the polling place so designated.

Appointment
of deputies for
additional
polling places.

(9) The returning officer shall appoint a deputy returning officer for each such polling place, and deliver to him in due time a polling list to be prepared by the clerk of the peace or the clerk of the municipality as the case may be in

the manner hereinafter provided, containing the names of all voters on the proper list of voters for the polling subdivision whose surnames commence with the letters of the alphabet included within the letters by which such polling place is designated. 8 Edw. VII. c. 3, s. 54.

55. Every polling place shall be furnished with compartments in which the voters can mark their ballot papers screened from observation; and it shall be the duty of the returning officer and the deputy returning officer respectively, to see that a sufficient number of compartments is provided at each polling place. 8 Edw. VII. c. 3, s. 55.

Compartment for voters to mark ballots.

NOMINATION.

PROCEDURE BY RETURNING OFFICER.

56. The returning officer, at the time and place fixed for the nominations shall in the English language make or cause to be made, in the presence of the voters there assembled, a proclamation, Form 7, and read or cause to be read publicly, the writ of election, and his commission as returning officer when he has been appointed by commission, and shall then require the electors there present to name the person or persons whom they wish to represent them in the Assembly. 8 Edw. VII. c. 3, s. 56.

Proceedings of the returning officer on the day of nomination.

WHEN POLL TO BE GRANTED.

57. A show of hands shall not be taken on the nomination day, but if more candidates than are required to be elected are nominated the returning officer shall grant a poll for taking the votes, and if he refuses or neglects to do so he shall incur a penalty of \$1,000, and if he declares any candidate to be elected the election shall be void. 8 Edw. VII. c. 3, s. 57.

Grant of poll.

ELECTION BY ACCLAMATION.

58. If no more candidates are nominated than are required to be elected, or if by the withdrawal of persons nominated there remain no more candidates than are required to be elected, the returning officer at the expiration of one hour from the nomination of the candidate last nominated, shall close the election, and openly proclaim the person or persons so chosen to be duly elected. 8 Edw. VII. c. 3, s. 58.

If only one candidate proposed within an hour, he to be declared elected.

OFFICIAL AGENTS OF CANDIDATES.

59. The returning officer shall announce at the place and on the day of nomination and on or immediately after the day of nomination, shall publish at the expense of the candidates the names and addresses of their official agents in a newspaper, published or circulated within the electoral district. 8 Edw. VII. c. 3, s. 59.

Returning officer to publish names and addresses of agents.

WITHDRAWAL OF CANDIDATES.

Withdrawal of
candidate after
nomination.

60. Subject to the provisions of section 24 a candidate may withdraw at any time after his nomination and before the opening of the poll, by delivering to the returning officer a declaration in writing, Form 8, to that effect signed by himself in the presence of a subscribing witness, and any votes cast for a candidate who has so withdrawn shall be null and void; and if after the withdrawal there remain but one candidate, or only the number of candidates required to be elected, the returning officer shall return as duly elected the candidate or candidates so remaining. 8 Edw. VII. c. 3, s. 60.

DEATH OF CANDIDATE.

Death of can-
didate.

61. If a candidate dies after being nominated and before the close of the poll, the returning officer shall fix new days for the nomination of candidates, and for polling, and the nomination day shall be the nearest day practicable, after allowing the required delay between the posting up of the proclamation and the nomination day, and, with his return, he shall make to the Clerk of the Crown in Chancery a report of the cause which occasioned the postponement of the election. 8 Edw. VII. c. 3, s. 61.

PROCLAMATION OF NAMES OF DEPUTY RETURNING OFFICERS.

Returning
officer to pro-
claim names of
deputy return-
ing officers.

62. Where a poll has been granted, the returning officer, immediately after having granted a poll, and before adjourning his proceedings, shall publicly proclaim at the place of nomination as far as practicable the names of the deputy returning officers. 8 Edw. VII. c. 3, s. 62.

POLLING.

PROCEEDINGS PRELIMINARY TO THE POLL.

Deputy Returning Officers.

Appointment
of deputy
returning
officers.

63.—(1) The returning officer, by a commission under his hand, Form 9, shall appoint a deputy returning officer for every polling place.

Deputy return-
ing officer to be
a voter in local
municipality.

(2) No person shall be so appointed who is not a voter in the local municipality wherein the polling place for which he is appointed is situate, or, in the case of territory without municipal organization, who is not a voter in the electoral district. 8 Edw. VII. c. 3, s. 63.

Oath of
office, etc.

64. Every deputy returning officer before acting shall take and subscribe, the oath, Form 10. 8 Edw. VII. c. 3, s. 64.

65. A person appointed a deputy returning officer who refuses to accept the office, or who, after having accepted it, refuses or neglects to take and subscribe the oath or to perform the duties of a deputy returning officer, shall incur a penalty of \$100. 8 Edw. VII. c. 3, s. 65.

Penalty for refusing to perform duties of office.

66. In case of the death, illness or absence of a deputy returning officer or of his refusal or neglect to act, the returning officer may in the manner hereinbefore provided, appoint another deputy returning officer to act in his stead; and the appointment and oath of the person so appointed shall be endorsed upon or attached to the poll book. 8 Edw. VII. c. 3, s. 66.

Death or absence of deputy returning officer.

Polling Places in Unorganized Territory.

67. In territory without municipal organization, polls shall be held at such places as the Lieutenant-Governor in Council may direct. 8 Edw. VII. c. 3, s. 67.

Polling places in districts.

68. Territory comprised within a newly organized municipality for which there is no assessment roll shall be deemed to be territory without municipal organization within the meaning of the next preceding section. 8 Edw. VII. c. 3, s. 68.

Municipality without assessment roll.

Materials to be furnished to Deputy Returning Officer.

69. The returning officer shall deliver to each deputy returning officer, two days at least before the polling day, a blank poll book, forms of oaths to be administered to voters, envelopes and sealing-wax, and a screen, if one is required. 8 Edw. VII. c. 3, s. 69.

Supplies to be furnished by Returning Officer.

Ballot Papers.

70.—(1) The returning officer shall procure to be printed on the paper furnished to him, as hereinafter provided, a sufficient number of ballot papers, not being less than the total number of voters in the electoral district.

Returning officer to see to printing of ballots.

(2) The names of the candidates, alphabetically arranged in the order of their surnames, shall be printed on the ballot paper and it shall be provided with a counterfoil and a stub, and there shall be a line of perforations between the ballot and the counterfoil and between the counterfoil and the stub, the whole as in Form 12.

Form of ballot.

(3) Where two members are to be elected, and there are more than two candidates, the candidates may, within an hour after the time appointed for the nomination, agree to their names being arranged otherwise than alphabetically, and in such case the returning officer shall have the names arranged accordingly on the ballot paper.

Arrangement of names thereon.

Weight of
paper.

(4) The paper used for printing the ballot papers shall be of the following weight: if foolscap paper is used, it shall be of a weight of not less than sixteen pounds to the ream; if large post paper is used, it shall be of a weight of not less than twenty-five pounds to the ream.

Paper furnish-
ed by King's
Printer.

(5) The paper required for the printing of the ballot papers shall be furnished to the returning officer by the King's Printer, when the writ for the election is transmitted to him, or as soon thereafter as possible.

Numbering of
ballot papers.

(6) The ballot papers shall be numbered on the back of the stub and the counterfoil, the same number being printed or written on the stub as on the counterfoil, and shall be bound or stitched in books containing twenty-five, fifty, or one hundred ballot papers, as may be most suitable for supplying the polling subdivisions proportionately to the number of voters in each.

Uniformity.

(7) All ballot papers shall be of the same description and as nearly alike as possible.

Printer's name.

(8) The ballot papers shall bear the name of the printer who prints them.

Affidavit of
printer.

(9) The printer shall, with the ballot papers, deliver to the returning officer, an affidavit, Form 11. 8 Edw. VII. c. 3, s. 70.

Supply to
Deputy
Returning
Officer.

71.—(1) The returning officer shall furnish each deputy returning officer with a sufficient number of ballot papers to supply the voters on the polling list of his polling place or polling subdivision, and a certificate of the number of ballot papers with the necessary materials for voters to mark their ballot papers.

Ballots to be
stamped.

(2) Every ballot paper shall be stamped by the returning officer with a stamp furnished to him for that purpose by the Clerk of the Crown in Chancery, the impression of the stamp being so placed on the ballot paper that, when the latter is folded by a voter, the impression can be seen without the ballot paper being opened.

Special
stamp.

(3) The stamp shall be specially designed and made for the purposes of each election, and shall be forwarded by the Clerk of the Crown in Chancery to the returning officer, so as to reach him on or about the nomination day.

Design of
stamp.

(4) The stamp shall show the name of the electoral district and the year of the election, and shall be of such design that an impression made from it shall be readily recognizable.

Copies of
directions to
voters for
deputy re-
turning
officers.

72. The returning officer shall furnish each deputy returning officer with at least five copies of the printed directions, Form 13, for the guidance of voters in voting, and the deputy returning officer shall before or at the

opening of the poll, on the day of polling, cause such printed directions to be posted up in conspicuous places outside of the polling place, and also in each compartment of the polling place. 8 Edw. VII. c. 3, s. 72.

Certificate as to Assessment Roll.

73.—(1) The returning officer shall, before the opening of the poll, obtain from the clerk of each municipality, a certificate, Form 14, shewing the day fixed for the assessor to begin to make the assessment roll on which the voters' lists proper to be used for the purposes of the election is based, and the last day on which a complaint could be made to the Judge in respect of the list. Obtaining certificate as to assessment roll, etc.

(2) The clerk shall furnish the certificate upon being required to do so by the returning officer or any other person who applies for the same, and in case of neglect or refusal shall incur a penalty of \$200. Clerk to give certificates.

(3) For every such certificate the clerk shall be entitled to receive the sum of twenty-five cents. Fee.

(4) The returning officer immediately after receiving the certificates shall enter copies thereof in the proper poll books and shall certify thereunder that the same are true copies of the original certificates received by him from the clerk. Entry of certificates in poll books.

(5) The copies of the certificates in the poll book shall be the evidence upon which the deputy returning officer shall act in inserting in the oath to be administered to a voter the date for beginning to make the assessment roll or the last day for making complaints. 8 Edw. VII. c. 3, s. 73. Certificate to be evidence of dates.

Voters' Lists.

74. Subject to the provisions of the next succeeding four sections, the first and third parts of the last voters' list certified by the Judge and delivered or transmitted to the clerk of the peace, under *The Ontario Voters' Lists Act*, before the date of the writ, shall be the proper voters' list under that Act for the election. 8 Edw. VII. c. 3, s. 74. What voters' list to be used. Rev. Stat. c. 6.

75. If a municipal council has by by-law divided the municipality into polling subdivisions in accordance with the provisions of *The Municipal Act*, and the time for appealing from the by-law has expired, and no voters' lists for the subdivisions have been filed with the clerk of the peace, as required by *The Ontario Voters' Lists Act*, but a voters' list of the municipality or of the wards therein has been duly certified by the Judge, such list shall be the proper voters' list for the election. 8 Edw. VII. c. 3, s. 75. Where time for appealing from by-law making polling subdivisions has expired, and no voters' lists filed. Rev. Stat. c. 6.

Where voters' list embraces portions of electoral districts.

76. Where a voters' list embraces territory forming part of two or more electoral districts, the clerk of the peace under the direction of the returning officer shall enter the names of the voters in such territory in the proper polling list. 8 Edw. VII. c. 3, s. 77.

Municipalities where there is an assessment roll but no voters' list filed or certified. Rev. Stat. c. 6.

77.—(1) In the case of a municipality formed out of territory without previous municipal organization for which there is an assessment roll but for which no voters' list has been certified by the Judge under *The Ontario Voters' Lists Act*, the returning officer shall obtain from the clerk of the municipality a list for every polling subdivision containing the names alphabetically arranged of all persons appearing by the then last revised assessment roll to be entitled to vote in that polling subdivision and he shall certify such lists in writing.

Effect.

(2) Every list so prepared, shall be the proper voters' list for the election for the municipality or polling subdivision.

Where certified but not filed.

(3) Where the voters' list has been certified by the Judge at least ten days before the polling day, but has not been filed with the clerk of the peace before the date of the writ of election it shall nevertheless be the proper list under *The Ontario Voters' Lists Act* for the municipality. 8 Edw. VII. c. 3, s. 78.

Rev. Stat. c. 6.

Preparation of Polling Lists by Clerk of the Peace.

Clerk of the peace to prepare lists of voters.

78.—(1) Every returning officer, upon granting a poll shall forthwith obtain from the clerk of the peace a polling list for each polling subdivision in the electoral district which shall be a true copy of the proper voters' list or of the proper voters' list and the list of manhood suffrage voters, as the case may be, for the polling subdivision, and the returning officer shall immediately cause the polling lists to be delivered to the deputy returning officers.

Lists for additional polling places.

(2) Where a returning officer instead of subdividing a polling subdivision provides additional polling places he shall obtain from the clerk of the peace as many polling lists as may be necessary for such additional polling places, and the clerk of the peace shall enter thereon the name of every person appearing to be entitled to vote at the polling place for which such polling list is required.

When clerk to perform duties of clerk of the peace.

(3) The clerk of the municipality who has the custody of a voters' list shall if required by the returning officer discharge the duties by this section assigned to the clerk of the peace, and he shall also perform the like duties as to the voters' list mentioned in subsection 3 of section 77. 8 Edw. VII. c. 3, s. 79.

79.—(1) In the case of cities and towns to which *The Manhood Suffrage Registration Act* applies, the clerk of the peace, when preparing a list of voters appearing to be entitled to vote within the subdivision or at the polling place for which the list is required, shall write at the beginning of each list in red ink, the words "Part I. Voters entitled according to the joint Municipal and Assembly list," and shall enter on that part of the list in alphabetical order the names of all persons who according to the proper voters' list are entitled to vote at both municipal elections and elections to the Assembly, and no other names.

Mode of entering names.
Where
Rev. Stat.
c. 7 applies.

From Voters' List.

(2) When the clerk of the peace has so completed the list of names, he shall write on the line immediately below the last of the names the following words, in red ink, "Part II. Voters entitled under Manhood Suffrage" and shall then enter on that part of the list in alphabetical order the names of all persons appearing on the last list of voters prepared under *The Manhood Suffrage Registration Act*.

From list under Manhood Suffrage Registration Act.

Rev. Stat.
c. 7.

(3) Where the list consists of more than one sheet or page he shall sign his name at the foot of each sheet or page, immediately after the last name thereon.

Authentication.

(4) He shall also deliver to the returning officer a sufficient number of certificates showing the date on which, as appearing by the registrar's certificate appended to his list, the first sittings was held for the preparation of the manhood suffrage voters' list. 8 Edw. VII. c. 3, s. 80.

Certificates as to registration.

80.—(1) The clerk of the peace shall add to each polling list a certificate that it is a true copy of the proper voters' list or of the proper voters' list and the list of manhood suffrage voters, as the case may be, for the polling subdivision, or polling place.

Certificate of Clerk of Peace.

(2) The clerk of the peace or the clerk of the municipality as the case may be shall be paid by the returning officer the sum of six cents for every ten names of voters on the polling list prepared by him. 8 Edw. VII. c. 3, s. 81.

Fees.

Poll Clerks.

81.—(1) The deputy returning officer shall, by a commission under his hand, Form 15, appoint a poll clerk to assist him in taking the poll; and the poll clerk before acting, shall take and subscribe the oath, Form 16.

Appointment of Poll Clerks.

(2) Every person appointed poll clerk who refuses to accept the office, or who, after having accepted it refuses or neglects either to take and subscribe the oath or to perform the duties of a poll clerk, shall incur a penalty of \$40.

Penalty.

(3) No person shall be appointed poll clerk who is not a voter in the local municipality wherein the polling place to which he is appointed is situate, or, in the case of terri-

Poll Clerk to be a voter in local municipality.

tory without municipal organization, who is not a voter in the electoral district. 8 Edw. VII. c. 3, s. 82.

Duties of
poll clerk.

82. The poll clerk shall assist the deputy returning officer in the performance of the duties of his office, and shall obey his orders. 8 Edw. VII. c. 3, s. 83.

To act as
deputy re-
turning officer
in certain
cases.

83. If the deputy returning officer refuses or neglects to perform the duties of his office, or from any cause becomes unable to perform them, and if no other deputy returning officer appointed by the returning officer appears at the polling place the poll clerk, under the same penalties as are hereinbefore imposed in like cases on a deputy returning officer, shall act as deputy returning officer, and perform all the duties and be subject to all the obligations of that office, without taking the oath of a deputy returning officer. 8 Edw. VII. c. 3, s. 84.

Appointment
of another
poll clerk
in such case.

84. Where a poll clerk acts as deputy returning officer he may appoint by a commission under his hand, Form 15, another person as poll clerk, to assist him in the performance of the duties of his office, and may administer to him the oath, and such commission and oath shall be endorsed on or attached to the poll book. 8 Edw. VII. c. 3, s. 85.

Appointment
of poll clerk
in certain
cases.

85. If a poll clerk refuses or neglects to perform the duties of his office or from any cause becomes unable to perform them, the deputy returning officer may appoint another person as poll clerk, and the commission and the oath shall be endorsed on or attached to the poll book. 8 Edw. VII. c. 3, s. 86.

Constables.

Constable at
polling place.

86. The deputy returning officer may appoint a constable to preserve order at the polling place. 8 Edw. VII. c. 3, s. 87.

Where Voters to Vote.

Voter to vote
in subdivision
in which he
resides.

87.—(1) Subject to the provisions of the next succeeding section, if the name of a person entitled to vote is entered on the polling list for more than one polling subdivision he shall vote only at the polling place for the subdivision in which he resides, if entitled to vote in such subdivision.

Where voter
to vote
in unorgan-
ized territory.

Rev. Stat.
c. 6.

(2) Subject to the provisions of the next succeeding section, where a voters' list has been prepared under Part III. of *The Ontario Voters' Lists Act*, every person named therein may vote at the polling place on the list for which he is entered and not elsewhere.

Penalty.

(3) A person who votes in contravention of this section shall incur a penalty of \$200. 8 Edw. VII. c. 3, s. 88.

88.—(1) The returning officer on the request of any person entitled to vote who has been appointed deputy returning officer or poll clerk, or agent of any of the candidates at a polling place other than the one at which he is entitled to vote, shall give to such person a certificate that he is entitled to vote at the polling place at which he is stationed during the polling day, and the certificate shall bear the date upon which it is signed by the returning officer.

Deputy, poll clerk and agents may vote at polling places where they are employed.

(2) The returning officer shall not give such certificate until he has ascertained by reference to the polling list that the applicant is entitled to vote and after giving such certificate he shall forthwith give notice in writing thereof to the deputy returning officer for the polling subdivision or polling place in which the applicant appears by the polling list to be entitled to vote, and the person to whom the certificate has been given shall not thereafter be entitled to vote in such polling subdivision or polling place.

When certificate for that purpose may be given.

(3) The returning officer shall not be required to give a certificate under this section unless requested to do so at least two days before polling day, and he shall be entitled to a fee of ten cents for every certificate.

At what time.

(4) The certificate shall name the polling place at which the person is to be permitted to vote.

Polling place to be designated.

(5) The returning officer shall enter in a list the name, residence and occupation of every person to whom he gives a certificate under this section, the polling place at which such person is under the certificate, authorized to vote, and the polling subdivision or polling place in or at which such person appears by the polling list to be entitled to vote and state therein whether the certificate is granted to him as deputy returning officer, poll clerk or agent, and if as agent, the name of the candidate for whom he is agent, and the entry shall be made before the certificate is delivered.

Returning officer to keep a list of persons obtaining certificates

(6) The returning officer shall also enter in the list the name of every person applying for a certificate to whom it was refused with the ground of refusal, and, if the last mentioned person claimed to be the agent of a candidate the name of the candidate, and the list shall be open to inspection by a candidate or by his agent or by a voter.

Entry of refusal of certificate.

(7) A returning officer shall not give certificates to more than two agents of the same candidate at one polling place and he shall not give a certificate under this section except upon the personal or written request of the applicant, and a returning officer who gives a certificate in contravention of this subsection shall incur a penalty of \$400.

Limitation of number of certificates to agents of candidates

On production
of certificate of
returning
officer.

89.—(1) On the production of the certificate the voter shall have the right to vote at the polling place named therein; but the certificate shall not entitle a voter to vote there unless he has been actually engaged there as deputy returning officer, poll clerk, or agent during polling day, or entitle an agent to vote who is disqualified under section 13.

Person receiv-
ing a certificate
to take oath of
qualification
before voting.

(2) A person who receives a certificate whether a deputy returning officer, poll clerk or agent, shall not vote until he has taken one or other of the oaths of qualification, and any person violating the provisions of this subsection shall incur a penalty of \$400; and every vote cast in contravention of this subsection shall be null and void.

Before whom
oath to be
taken.

(3) The oath shall be administered to a deputy returning officer by the poll clerk, and to a poll clerk or agent by the deputy returning officer.

Entry on list of
persons voting
under author-
ity of a
certificate.

(4) The deputy returning officer shall enter, or cause to be entered in the column for remarks in the poll book, Form 2, opposite the name, residence and occupation of every person, including himself if he so votes, voting under the authority of a certificate, the words "Voted under certificate."

Certificate to
be delivered to
Deputy Re-
turning Officer
by person
voting.
Preservation.

(5) A person voting under the authority of a certificate shall deliver it to the deputy returning officer before receiving his ballot paper.

(6) The deputy returning officer shall enclose all certificates in one envelope. 8 Edw. VII. c. 3, s. 90.

THE POLL.

Hours of
voting.

90. The poll shall be opened at every polling place at nine o'clock in the forenoon, and shall be kept open until five in the afternoon of the same day. 8 Edw. VII. c. 3, s. 91, *part*.

Vote by
ballot.

91. The votes shall be given by ballot. 8 Edw. VII. c. 3, s. 91, *part*.

Attendance
of Deputy
Returning
Officer.

92.—(1) The deputy returning officer shall attend at the polling place at least fifteen minutes before the hour fixed for opening the poll.

Counting
ballots before
opening of
poll.

(2) During such fifteen minutes, agents and voters entitled to be present in the polling place during polling hours shall be entitled to have the ballot papers intended for use thereat counted in their presence before the opening of the poll, and to inspect such ballot papers, and all other papers, forms and documents relating to the poll. 8 Edw. VII. c. 3, s. 92.

Deputy to
shew box
empty and lock
and seal it.

93. The deputy returning officer shall, immediately before opening the poll, shew the ballot box to, such persons as are present in the polling place, so that they may

see that it is empty; and he shall then lock the box, and place his seal upon it in such a manner as to prevent its being opened without breaking the seal; and he shall then place and shall keep the box on a desk, counter or table or otherwise so that it is raised above the floor in full view of all present and shall keep the box so locked and sealed. 8 Edw. VII. c. 3, s. 93.

94. Not more than one voter for each compartment shall at any one time enter the room where the poll is held, and each voter upon so entering shall declare his name, place of residence and occupation, which particulars shall be entered in the poll book by the poll clerk, a consecutive number being prefixed to the name. 8 Edw. VII. c. 3, s. 94

One voter only
for each com-
partment

95. Subject to the provisions of section 89, the deputy returning officer shall not receive the vote of any person whose name is not entered on the polling list, but shall receive the vote of every person whose name is entered thereon, if such person, where required by a candidate, or his agent, or by the deputy returning officer takes the oath hereinafter mentioned.

Persons on
polling list to
be allowed to
vote on taking
oath if re-
quired.

(a) The oath to be taken by a voter shall be according to Form 17, except in a city or town for which a list of manhood suffrage voters has been prepared on which the name of the person offering to vote is entered, in which case the oath shall be according to Form 18, and except in territory without municipal organization in which the voters' list was prepared under Part III. of *The Ontario Voters' Lists Act*, in which case the oath to be taken shall be according to Form 19. 8 Edw. VII. c. 3, s. 95, *part*.

Ordinary
oaths.

Rev. Stat.
c. 6.

96. If a deputy returning officer votes at the polling place at which he has been appointed to act, the poll clerk or in his absence the agent of a candidate authorized to be present may administer to him the oath to be taken by a voter. 8 Edw. VII. c. 3, s. 96.

Administration
of oath to
deputy return-
ing officer
voting at his
polling place.

97.—(1) Where a deputy returning officer has reason to believe that a person offering to vote is not a qualified voter or has already voted, or tenders his vote under a false name or designation or personates or represents himself falsely as being upon the polling list, the deputy returning officer shall administer the prescribed oath to the voter, whether he has been required to do so or not.

When deputy
returning
officer to
swear voter.

(2) A deputy returning officer who acts in contravention of this section shall incur a penalty of \$200. 8 Edw. VII. c. 3, s. 97.

Penalty.

Deputy to put initials on back of ballot paper and number on counterfoil.

98. Every person who is entitled to vote shall receive from the deputy returning officer a ballot paper on the back of which the deputy returning officer has previously put his initials so placed as indicated in Form 12 that when the ballot is folded they can be seen without opening it, and on the back of the counterfoil of which he has placed a number corresponding to that placed opposite the voter's name in the poll book. 8 Edw. VII. c. 3, s. 100.

Instructions to voter.

99. The deputy returning officer shall, upon request of the voter instruct him how to mark and fold his ballot paper, but without inquiring or seeing for whom he intends to vote except in the cases provided for by section 100. 8 Edw. VII. c. 3, s. 101.

Voter incapacitated by blindness, etc.

100.—(1) The deputy returning officer, on the application of any voter who is unable to read or is incapacitated by blindness or other physical cause from voting in the manner prescribed by this Act, shall assist such voter by marking his ballot paper in the manner directed by such voter, in the presence of the poll clerk and of the agents of the candidates, or of the voters representing the candidates in the polling place, and of no other person.

Oath.

(2) The deputy returning officer shall require the voter making such application, before voting, to take before him the oath, Form 20.

Entry in poll book.

(3) The deputy returning officer shall enter in the column for remarks in the poll book opposite the voter's name, the reason why such ballot paper was marked by him. 8 Edw. VII. c. 3, s. 102.

Voters who cannot speak English.

101.—(1) Where a voter does not understand the English language the deputy returning officer may employ an interpreter to translate the oath as well as any lawful questions necessarily put to the voter, and his answers; and the interpreter shall take the oath following:—

“I swear (or affirm) that I will faithfully translate such oaths, declarations, questions and answers as the deputy returning officer shall require me to translate at this election: So help me God.”

If no interpreter, no vote.

(2) If no such interpreter is found or presents himself at the polling place the voter shall not be allowed to vote. 8 Edw. VII. c. 3, s. 103.

Mode of marking, folding and depositing ballot paper.

102. The voter on receiving his ballot paper shall forthwith proceed into one of the compartments of the polling place, and there mark his ballot paper, making a cross with a black lead pencil within the white space containing the name of the candidate, or within the white spaces containing the names of the candidates for whom he intends

to vote, and shall then fold the ballot paper so that the initials and stamp on the back of it and the number on the counterfoil can be seen without opening it, and hand it to the deputy returning officer, who shall, without unfolding it, ascertain, by examining his initials, and the stamp and the number on the counterfoil, that it is the same ballot paper that he furnished to the voter, and shall then, in full view of all present, including the voter, remove the counterfoil and tear up or otherwise destroy it and place the ballot paper in the ballot box. 8 Edw. VII. c. 3, s. 104.

103. The poll clerk shall enter in the poll book opposite the name of each voter voting the word "Voted" as soon as the ballot paper has been deposited in the ballot box, and shall enter in the same book the word "Sworn" or "Affirmed" opposite the name of each voter to whom the oath has been administered, and the words "Refused to be sworn" or "Refused to affirm" opposite the name of each voter who has refused to take any oath when he has been required so to do. 8 Edw. VII. c. 3, s. 98.

Entries to be made in poll book as to voters.

104.—(1) A person who has refused to take the oath when required so to do, shall not receive a ballot paper or vote; and the vote of such person if taken and received shall be null and void.

Voter refusing to be sworn.

(2) A deputy returning officer who receives such vote or causes the same to be received, shall incur a penalty of \$200. 8 Edw. VII. c. 3, s. 99.

Penalty for receiving such vote.

105. The voter shall vote without undue delay, and shall leave the polling place so soon as his ballot paper has been placed in the ballot box. 8 Edw. VII. c. 3, s. 105

Voter to leave as soon as possible.

106. While a voter is in a compartment for the purpose of marking his ballot paper no other person shall be allowed to enter the compartment, or to be in a position from which he can see for whom the voter marks his ballot paper. 8 Edw. VII. c. 3, s. 106.

Exclusion from balloting compartment.

107. A person who has received a ballot paper shall not take it out of the polling place; and a person who receives a ballot paper, and leaves the polling place without delivering it to the deputy returning officer, or returns his ballot paper declining to vote, shall forfeit his right to vote, and the deputy returning officer shall make an entry in the poll book in the column for remarks, to the effect that such person received a ballot paper, but took it out of the polling place, or returned it declining to vote, as the case may be, and in the latter case the deputy returning officer shall immediately write the word "Declined" upon the ballot

Voter not to take his paper from polling place, etc.

paper, and shall preserve it to be returned to the returning officer. - 8 Edw. VII. c. 3, s. 107.

Voter who alleges he has been personated.

108.—(1) If a person representing himself to be a voter applies for a ballot paper after another person has voted as such voter, he shall be entitled to receive a ballot paper and to vote after taking the oath, and otherwise establishing his identity to the satisfaction of the deputy returning officer.

Initials and number to be put on back.

(2) The deputy returning officer shall put on the back of the ballot paper his initials and a number corresponding to the number entered on the poll book opposite the name of the voter.

Name of voter, etc., to be entered in poll book.

(3) The name of the voter shall be entered on the poll book, and a note shall be made of his having voted on a second ballot paper, and of the fact of the oath having been taken and of any objections made on behalf of any and of which of the candidates. 8 Edw. VII. c. 3, s. 108.

Where ballot paper accidentally spoilt.

109. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used, shall upon returning it to the deputy returning officer, be entitled to obtain another ballot paper, and the deputy returning officer shall immediately write the word "Cancelled" upon the first mentioned ballot paper and preserve it to be returned to the returning officer. 8 Edw. VII. c. 3, s. 109.

What shall be deemed a tender of a vote, and a voting.

110. A person who applies for a ballot paper shall by so doing be deemed to have tendered his vote or to have offered to vote; and a person who has placed or caused to be placed his ballot paper in the ballot box, or has delivered it to the deputy returning officer or poll clerk for the purpose of having it placed in the ballot box shall be deemed to have voted. 8 Edw. VII. c. 3, s. 110.

Who may be in polling place.

111.—(1) In addition to the deputy returning officer, the poll clerk, the constable or constables, the candidates and their agents, not exceeding two in number for each candidate, and, in the absence of agents, two voters to represent each candidate on the request of such voters, and no others shall be permitted to remain in the polling place during the time the poll remains open and at the counting of the votes.

Right of authorized agent.

(2) An agent bearing a written authorization from the candidate shall always be entitled to represent him in preference to, and to the exclusion of, any two voters who might otherwise claim the right of representing such candidate. 8 Edw. VII. c. 3, s. 111.

112. A voter entitled to vote within a city or town shall, on the day of polling be entitled to absent himself for the purpose of voting from any service or employment in which he is then engaged or employed, from the hour of noon until the hour of two of the clock next thereafter, and a voter shall not, because of his so absenting himself, be liable to any penalty, or suffer or incur any reduction from the wages or compensation to which but for his absence he would have been entitled, but this section shall not apply where a voter is by his employer permitted or allowed at any other period during the hours of polling, reasonable and sufficient time and opportunity to vote. 8 Edw. VII. c. 3, s. 112.

Right of
employee to
time for
voting.

Proviso.

PROCEEDINGS AFTER THE CLOSE OF THE POLL.

113. Immediately after the close of the poll, the deputy returning officer shall first place all the cancelled and declined ballot papers in separate envelopes and seal them up, and shall then count the number of voters whose names appear by the poll book to have voted, and make an entry thereof on the line immediately below the name of the voter who voted last, thus;—*The number of voters who voted at this election in this polling place is (stating the number),* and he shall sign his name thereto: then, in the presence and in full view of the persons entitled to be present, he shall open the ballot box and proceed to count the number of votes for each candidate, giving full opportunity to those present to examine each ballot paper. 8 Edw. VII. c. 3, s. 113.

Duties of Deputy
Returning
Officer after
close of poll.

114. In counting the votes the deputy returning officer shall reject all ballot papers, herein called "Rejected ballot papers,"

What ballot
papers to
be rejected
in counting
votes.

- (a) which have not been supplied by him; or
- (b) by which votes have been given for more candidates than are to be elected; or,
- (c) upon which there is any writing or mark by which the voter can be identified, other than the number placed thereon by the deputy returning officer in the case provided for by section 108;

but no word, letter or mark written or made or omitted to be written or made by the deputy returning officer on a ballot paper, shall avoid the same or warrant its rejection. 8 Edw. VII. c. 3, s. 114.

115.—(1) The deputy returning officer shall make a note of every objection taken to a ballot paper, by a candidate, or his agent or a voter present, and shall decide the objection subject to review on recount or on petition questioning the election or return.

Objections to
be noted,

and numbered,
and initialed.

(2) Each objection shall be numbered, and a corresponding number placed on the back of the ballot paper and initialed by the deputy returning officer. 8 Edw. VII. c. 3, s. 115.

How ballots to
be counted.

116.—(1) All the ballot papers not rejected by the deputy returning officer shall be counted and an account kept of the number of ballots cast for each candidate, and of the number of rejected and cancelled ballot papers, and all the ballot papers indicating the votes given for each candidate respectively, shall be put into a separate envelope. 8 Edw. VII. c. 3, s. 116 (1); 2 Geo. V. c. 17, s. 1 (1).

Ballot papers
to be put into
parcels under
seal.

(2) All rejected, and unused ballot papers respectively, shall be put into separate envelopes, which shall be endorsed so as to indicate their contents, and shall be sealed by the deputy returning officer, and any agent present may write his signature across the flap of the envelope and may also affix his seal. 8 Edw. VII. c. 3, s. 116 (2).

Statement of
result to be
made by depu-
ty returning
officer.

117.—(1) The deputy returning officer shall make out a statement in triplicate, Form 21, one part to remain attached to the poll book, another to be retained by him, and the third to be enclosed by him in a special envelope supplied for the purpose, which he shall seal and deposit in the ballot box.

Signatures to
statement.

(2) The statement shall forthwith be signed by the deputy returning officer and poll clerk and such of the candidates or their agents as may be present, and may desire to sign it.

Certificate of
result of poll.

(3) The deputy returning officer shall then deliver to each of the candidates, or to their agents, or, in the absence of the candidates and agents, to the voters present representing the candidates, a certificate, Form 22, of the number of ballots cast for each candidate, and of the number of rejected ballot papers; and he shall also, forthwith after the close of the poll, mail to each candidate, by registered post to his address stated in the ballot paper, a like certificate. 8 Edw. VII. c. 3, s. 117.

Oath of poll
clerk.

118. The poll clerk, immediately after the completion of the counting of the votes, shall take and subscribe the oath, Form 23. 8 Edw. VII. c. 3, s. 119; 2 Geo. V. c. 17, s. 1 (2).

Poll book, en-
velope, etc., to
be placed in
large envelope
in ballot box.

119. The poll book, the polling list, the envelopes containing the ballot papers, and all other documents which served at the election shall then be placed in the large envelope supplied for the purpose, which shall then be sealed and placed in the ballot box. 8 Edw. VII. c. 3, s. 118.

120.—(1) The deputy returning officer shall then immediately lock and seal the box, and forthwith deliver it personally to the returning officer, and if he is unable to do so owing to illness or other imperative cause, he shall deliver it to the poll clerk, or where the poll clerk is unable to act, to some person chosen by the deputy returning officer for the purpose of delivering it to the returning officer, and shall thereon or on a ticket attached thereto write the name of the person to whom the box has been delivered, and shall take a receipt therefor, and the poll clerk or person so chosen shall forthwith personally deliver the ballot box to the returning officer and shall take before him, the oath, Form 24.

Ballot box to be delivered to returning officer.

(2) Forthwith thereafter the deputy returning officer shall take and subscribe the oath, Form 25, and shall personally deliver or transmit it by registered post to the returning officer. 8 Edw. VII. c. 3, s. 120.

Oath of deputy returning officer.

121. The returning officer upon the receipt by him of any ballot box shall take every precaution for its safe keeping and for preventing any other person than himself and the election clerk from having access to it, and shall immediately on the receipt of each box seal it with his own seal in such a way that it cannot be opened without his seal being broken, and without effacing or covering the seals affixed thereto. 8 Edw. VII. c. 3, s. 121.

Duty of returning officer on receipt of boxes.

122. The returning officer at the place, day and hour appointed by his proclamation, and after having received all the ballot boxes, shall open them, and the large envelope containing the poll books, but not any of the other sealed envelopes except the one containing the statement of the poll, and shall in the presence of the election clerk and of the candidates or their representatives if present add up the votes given for each candidate from the statements of the poll contained in the ballot boxes, and shall forthwith declare to be elected the candidate having the largest number of votes. 8 Edw. VII. c. 3, s. 122.

Count by returning officer and declaration of result.

123. Where, on the addition of votes by the returning officer, an equality of votes is found to exist between any two or more candidates, and an additional vote would entitle any of them to be declared elected, the returning officer shall give the additional or casting vote. 8 Edw. VII. c. 3, s. 123.

Casting vote.

PROCEEDINGS IN CASE OF NON-RETURN OF BALLOT BOXES, ETC.

124. If the ballot boxes are not all returned on the day fixed for adding up the votes, the returning officer shall adjourn the proceedings to a subsequent day, which shall not be more than a week later than the day originally fixed. 8 Edw. VII. c. 3, s. 124.

Adjournment of proceedings where ballot box not duly delivered.

Where default made by deputy returning officer in returning documents.

125. If any deputy returning officer has not enclosed in the ballot box the statement of the ballot papers counted by him as required by this Act, or if for any other cause, the returning officer cannot, at the day and hour appointed by him for adding up the votes, ascertain the number of votes given for each candidate, he may adjourn to a future day and hour the adding up of the votes, and so from time to time, such adjournment or adjournments not in the aggregate to exceed two weeks. 8 Edw. VII. c. 3, s. 125.

Disappearance of ballot boxes, duty of returning officer.

126. If the ballot boxes or any of them have been destroyed or lost, or, for any other reason, are not forthcoming by the time fixed for adding up the votes, the returning officer shall ascertain the cause and shall procure from each deputy returning officer whose ballot box is missing, or from any other person having them, the statements and certificates of the number of votes given for each candidate or copies of them, the whole to be verified by oath. 8 Edw. VII. c. 3, s. 126.

Procedure by returning officer where lists, statements, etc., cannot be found.

127. If the statements and certificates, or any of them, or copies of them, cannot be procured, the returning officer shall ascertain by such evidence as he is able to obtain, the total number of votes given for each candidate at the several polling places; and may summon any deputy returning officer, poll clerk, or other person, to appear before him at a time and place to be named by him, with all necessary papers and documents, of which time and place and of the intended proceedings the candidates shall have notice; and the returning officer may examine on oath such deputy returning officer, poll clerk, or other person, respecting the matter in question. 8 Edw. VII. c. 3, s. 127.

When deputy returning officer has neglected to deliver statement of result.

128. In case of an adjournment by reason of any deputy returning officer not having placed in the ballot box, a statement of the ballot papers counted by him, the returning officer shall, in the meantime, use all reasonable efforts to ascertain the number of votes given for each candidate at the polling place of such deputy returning officer; and shall have the powers conferred by the next preceding section. 8 Edw. VII. c. 3, s. 128.

Special report by returning officer.

129. The returning officer shall return the candidate having the largest number of votes, and shall mention specially, in a report to be sent with the return the circumstances accompanying the disappearance of the ballot boxes, or the want of any statement, and the mode by which he ascertained the number of votes given for each candidate. 8 Edw. VII. c. 3, s. 129.

RECOUNT OR FINAL ADDITION BY COUNTY JUDGE.

130.—(1) If within four days after that on which the returning officer has made addition of the votes for the purpose of declaring any candidate elected, upon the application of a candidate or a voter, it is made to appear by affidavit to the Judge of the county court of the county in which the electoral district or any part of it is situate that a deputy returning officer has in counting the votes, Where recount may be had.

- (a) improperly counted any ballot paper,
- (b) improperly rejected any ballot paper,
- (c) made an incorrect statement of the number of ballots cast for any candidate, or
- (d) that the returning officer has improperly added up the votes,

and if the applicant deposits within that time with the clerk of the county court the sum of \$100 in legal tender, or in the bills of any chartered bank doing business in Canada, as security for the costs, in connection with the recount or final addition, of the candidate appearing by the addition to be elected, the Judge may appoint a time and place to recount or finally add up the votes cast at the election. Deposit by applicant.

(2) Where an electoral district comprises parts of two or more counties the application shall be made to and the recount or final addition shall take place before the Judge of the county court of the county having the larger or largest population according to the last Dominion census. 8 Edw. VII. c. 3, s. 130. What judge to hold recount when district in two or more counties.

131. At least two days' notice in writing of the time and place appointed, shall be given to the candidates and to the returning officer and the election clerk, and the Judge may, at the time of the application or afterwards, direct that service of the notice upon the candidates, the returning officer, and the election clerk, may be substitutional, or may be made by mail, or in such other manner as he thinks fit. 8 Edw. VII. c. 3, s. 131. Notice of time and place of recount.

132. The returning officer after the receipt of the notice shall delay making his return to the Clerk of the Crown in Chancery until he receives a certificate from the Judge of the result of the recount or final addition, and upon receipt of the certificate shall make his return. 8 Edw. VII. c. 3, s. 132. Returning officer to withhold return.

133. The Judge may require the clerk of the county court to be present at the time and place appointed. 8 Edw. VII. c. 3, s. 133. Presence of county court clerk.

Summoning officers to be present with documents.

134.—(1) The returning officer and his election clerk shall attend at the time and place appointed with the envelope containing the ballot papers, or the original statements of the poll, as the case may be.

Production and custody of ballot papers on a recount.

(2) The ballot papers and original statements shall continue in the custody of the returning officer, and he shall be responsible for them, subject to any direction which the Judge may give in respect thereto. 8 Edw. VII. c. 3, s. 134.

Who to be present at recount.

135.—(1) The returning officer and the election clerk shall be present at the recount or final addition, and each candidate shall be entitled to be represented by not more than three agents, and may himself be present.

If candidate not represented.

(2) Where a candidate is not represented, any three voters who declare their desire to attend on his behalf, shall be entitled to attend.

Authority of Judge.

(3) Except with the sanction of the Judge, no other person shall be present. 8 Edw. VII. c. 3, s. 135.

Procedure by Judge.

136. At the time and place appointed, and in the presence of such of the persons mentioned in the next preceding section as are present, the Judge shall make such final addition from the statements contained in the ballot boxes returned by the deputy returning officers, or recount all the votes or ballot papers returned by the several deputy returning officers, as the case may be, and shall, in the latter case, open all the sealed envelopes containing

- (a) the used ballot papers which have been counted,
- (b) the rejected ballot papers,
- (c) the cancelled ballot papers,
- (d) the declined ballot papers,
- (e) the unused ballot papers.

8 Edw. VII. c. 3, s. 136.

Recount to be proceeded with continuously.

137.—(1) The Judge shall, as far as practicable, proceed continuously, allowing only time for refreshment, and excluding, except so far as he and the persons present agree, the hours between six o'clock in the afternoon and nine in the succeeding forenoon.

Care of documents during proceedings.

(2) During such excluded time and time for refreshment the Judge shall place the ballot papers and other documents relating to the election close under his own seal and the seals of such of the persons present as desire to affix their seals, and shall otherwise take all necessary precautions for the security of such papers and documents. 8 Edw. VII. c. 3, s. 137.

138. The Judge shall, in the case of a recount, proceed according to the rules for the counting of the ballot papers at the close of the poll by a deputy returning officer, and shall verify and correct the statement of the poll, Form 21. 8 Edw. VII. c. 3, s. 138.

Rules to govern Judge in proceedings.

139.—(1) Upon the completion of the recount the Judge shall seal up all the ballot papers in their separate envelopes, and upon the completion of a final addition he shall seal up the original statements in their respective envelopes.

Sealing up ballots at close of recount.

(2) Where either party requests him to do so the Judge shall number on the back the disputed ballots and enclose them in a separate envelope. 8 Edw. VII. c. 3, s. 139.

Distinguishing disputed ballots.

140.—(1) The Judge shall if necessary or required, review the decision of the returning officer with respect to the number of votes given for a candidate at any polling place, where the ballot box used was not forthcoming when he made his decision, or when the proper statements or papers were not found therein.

Reviewing decision of Returning Officer when ballot box or documents missing.

(2) For the purpose of arriving at the facts, the Judge shall have all the powers of the returning officer with regard to the attendance and examination of witnesses or he may act upon the evidence taken by the returning officer. 8 Edw. VII. c. 3, s. 140.

Powers of Judge.

141.—(1) The Judge shall delay sending his certificate to the returning officer for two days after the completion of the recount or final addition in order to allow of an appeal as hereinafter provided.

When Judge to send in certificate.

(2) If no notice of appeal is given to the Judge within two days after the completion of the recount or final addition, the Judge shall certify the result to the returning officer forthwith, who shall then forthwith declare to be elected the candidate having the largest number of votes.

When declaration of result to be given.

(3) In case of an equality of votes, the returning officer shall give the casting vote. 8 Edw. VII. c. 3, s. 141.

Casting vote if Judge certifies equality of votes.

142.—(1) The costs of the recount or final addition shall be in the discretion of the Judge who may order by whom, to whom, and in what manner the same shall be paid.

Costs.

(2) The Judge shall tax the costs, and shall, as nearly as may be, follow the tariff of costs with respect to proceedings in the county court. 8 Edw. VII. c. 3, s. 142.

Taxing and allowing costs.

143. Where costs are directed to be paid by the applicant, the moneys deposited as security for costs shall be paid out to the party entitled thereto, so far as necessary.

Deposit, disposal of.

Recovery of costs if deposit not sufficient.

and if the deposit is insufficient, execution may issue out of the county court upon the Judge's order for the balance. 8 Edw. VII. c. 3, s. 143.

Appeal from Decision on Recount or Final Addition.

Appeal from decision of judge on recount.

144.—(1) If a party desires to appeal from the decision of the Judge he may do so on giving notice in writing to the opposite party and to the Judge of his intention to appeal within two days after the completion of the recount or final addition, and he may by the notice limit the appeal to specified ballots.

Service of notice of appeal.

(2) The notice may be served upon the opposite party personally, or upon the solicitor who acted for him upon the recount or final addition personally or at his office, or as a Judge of a Divisional Court may direct.

Ballots, etc., to be forwarded to Registrar of Appellate Division.

(3) Where the appeal is limited, the Judge of the county court shall seal up the ballots which are the subject of appeal in a separate packet and shall forward them together with the notice and a certificate showing his findings as to the ballots in dispute by registered post to the Registrar of the Appellate Division, but if the appeal is not limited the Judge shall forward all the ballot papers and other papers to the Registrar, and in either case he shall await the result of the appeal before sending his certificate to the returning officer.

Allowing copy of certificate of Judge.

(4) The Judge shall upon request allow each party to make a copy of the certificate of his findings before it is forwarded to the Registrar of the Appellate Division.

Appointment for hearing of appeal.

(5) On receipt of the ballot papers and notice the Registrar shall forthwith obtain an appointment from a Judge of a Divisional Court for hearing the appeal and shall notify the parties or their solicitors of the time so appointed.

When appeal may be heard.

(6) The time appointed for hearing the appeal shall not be more than four days from the date of the appointment.

Procedure on hearing of appeal: certificate of result.

(7) At the time appointed the Judge of the Divisional Court shall recount the ballot papers or such of them as are the subject of appeal, or review the final addition as the case may be, and shall forthwith certify his decision to the Judge of the county court, whose duty it shall be to conform to the decision, and to certify the result without delay to the returning officer.

Costs of appeal.

(8) The Judge of the Divisional Court may direct by and to whom the costs of the appeal shall be paid. 8 Edw. VII. c. 3, s. 144.

ELECTION RETURN.

145.—(1) The returning officer shall immediately after the sixth day after the final addition by him of the number of votes given for each candidate, unless before that time he receives notice that he is required to attend before a Judge for the purpose of a recount or final addition of the votes given at the election, and where there has been a recount or final addition, immediately after the receipt of the certificate of the result, transmit his return, Form 26, to the Clerk of the Crown in Chancery that the candidate having the largest number of votes has been duly elected, and shall forward to each of the candidates a duplicate or copy thereof.

When return
to be made

(2) The returning officer shall accompany his return to the Clerk of the Crown in Chancery with a report of his proceedings, in which he shall make any observations he thinks proper as to the state of the ballot boxes or ballot papers as received by him. 8 Edw. VI. c. 3, s. 145.

Report by
Returning
Officer.

146.—(1) The returning officer shall at the same time transmit to the Clerk of the Crown in Chancery, enclosed in a box or other covering, sealed with the seal of the returning officer the writ, the stamp furnished him for stamping the ballot papers, the list mentioned in subsection 5 of section 88, all the envelopes containing ballot papers in his possession, declarations of inability to read or to mark, poll books and all other documents sent to him by the deputy returning officers.

Returning
Officer to
transmit to
Clerk of the
Crown in
Chancery
the ballot
papers, etc.

(2) The returning officer shall endorse on the package a description of its contents, and the date of the election to which they relate, and also the name of the electoral district for which the election was held, and shall affix to the outside of the package a label showing distinctly the electoral district to which the contents relate and the date of the election.

Endorsement
thereon.

(3) The package shall be sent by express or by registered post.

How to be
sent.

(4) An affidavit, Form 27, shall be made by the Returning Officer forthwith after transmitting his return, and shall be forthwith transmitted by him to the Clerk of the Crown in Chancery, by registered post. 8 Edw. VII. c. 3, s. 146.

Oath of Re-
turning Officer
after transmit-
ting return.

FAILURE TO MAKE RETURN.

147.—(1) If a returning officer wilfully delays, neglects or refuses,

Application to
compel return-
ing officer to
add up votes,
make returns,
etc.

(a) to add up the votes,

(b) to declare to be elected the candidate having the largest number of votes,

(c) to give his casting vote where he is by law required to do so, or

(d) to make the return as required by this Act of the candidate having the largest number of votes,

the person aggrieved or any voter who voted at the election may apply to a Judge of the Supreme Court for a mandamus commanding the returning officer to perform the duty which he is shown to have omitted.

Notice of application.

(2) The notice shall be served upon the returning officer and upon any person who was a candidate at the election.

Application of Rev. Stat. c. 56 and rules.

(3) In other respects the provisions of *The Judicature Act* and of the Rules made thereunder shall apply to such application.

Other rights and remedies.

(4) Nothing in this section shall affect or impair any other right or remedy of the person aggrieved. 8 Edw. VII. c. 3, s. 147.

PUBLICATION OF RETURN.

Notice of return in *Ontario Gazette*.

148. The Clerk of the Crown in Chancery shall, on receiving the return of a member elected to the Assembly, give in the next ordinary issue of the *Ontario Gazette*, notice of the receipt of the return, the date of such receipt, and the name of the candidate elected. 8 Edw. VII. c. 3. s. 148.

CUSTODY OF ELECTION PAPERS.

How long to be retained and when to be destroyed.

149.—(1) The Clerk of the Crown in Chancery shall, subject to the provisions of this Act, retain in his possession the documents transmitted to him by a returning officer, under section 146, for at least one year, and, if the election is contested, then for one year after the termination of the contestation, and shall then destroy them by fire.

How to be kept by Clerk of the Crown in Chancery.

(2) The Clerk of the Crown in Chancery shall keep all documents relating to a general election in a room or vault separate from that in which documents relating to by-elections are kept.

Marking boxes when not to be destroyed.

(3) If notice of the presentation of a petition is received by the Clerk of the Crown in Chancery or, if an order is made directing that documents relating to an election are not to be destroyed, he shall affix to the outside of the box or covering containing such documents a label having thereon, in large and distinct letters the words "Not to be destroyed." 8 Edw. VII. c. 3, s. 149.

INSPECTION OF DOCUMENTS, BALLOT PAPERS, ETC.

Inspection of other documents.

150. All documents forwarded by a returning officer in pursuance of this Act, to the Clerk of the Crown in Chancery,

other than ballot papers, shall be open to public inspection, at such time and under such regulations as may be prescribed by the Clerk of the Crown in Chancery with the approval of the Speaker of the Assembly; and the Clerk of the Crown in Chancery shall supply copies of or extracts from the documents to any person demanding the same, on payment at the rate of ten cents for each one hundred words, and in computing the number of words a figure shall be counted as a word. 8 Edw. VII. c. 3, s. 150.

151.—(1) No person shall be allowed to inspect any ballot paper in the custody of the Clerk of the Crown in Chancery except under an order of a Judge of the Supreme Court. Inspection to be under order of Judge.

(2) The order may be made on the Judge being satisfied by affidavit or other evidence on oath that the inspection or production of such ballot paper is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return. When order to be granted.

(3) The order may be made subject to such conditions as the Judge may think proper. Conditions of order.

(4) Subject to the provisions of the order, the inspection shall take place under the immediate supervision of the Registrar of the Appellate Division at his office in Osgoode Hall and he shall be present during the inspection, and so long as the ballot papers are in the custody of the Registrar and not under inspection, they shall be kept in a secure place under lock and key. 8 Edw. VII. c. 3, s. 151. Where inspection to take place.

152. Where an order is made by a Judge of the Supreme Court for the production by the Clerk of the Crown in Chancery of any document in his possession relating to an election, the production of it by the Clerk or his agent, in such manner as may be directed by the order, shall be evidence that the document relates to the election; and any endorsement appearing on any envelope containing ballot papers so produced, shall be evidence that the contents are what they are stated to be by the endorsement. 8 Edw. VII. c. 3, s. 152. Evidence as to documents, ballot papers, etc., in certain cases.

PRESERVATION OF THE PEACE.

153. A returning officer and a deputy returning officer from the time he takes the oath of office until the day after the closing of the election shall be a conservator of the peace, and shall be invested with all the powers appertaining to a justice of the peace. 8 Edw. VII. c. 3, s. 153. Powers of Returning Officers and Deputy Returning Officers.

154. A returning officer and a deputy returning officer may require the assistance of justices of the peace, constables and other persons, to aid him in maintaining peace and good 12—s. Assistance by justices and constables.

order at the election and may also swear in as many special constables as he may deem necessary. 8 Edw. VII. c. 3, s. 154.

Special constables.

155. On a requisition in writing made by a candidate or by his agent, or by two or more voters, a returning officer or deputy returning officer shall swear in as many special constables as may be necessary. 8 Edw. VII. c. 3, s. 155.

Arrest and imprisonment on verbal order.

156. A returning officer or deputy returning officer may arrest or by verbal order cause to be arrested, and placed in the custody of any constable or other person, any person disturbing the peace and good order at the election, and may cause such person to be imprisoned under an order signed by him until an hour not later than the close of the nomination or of the poll as the case may be. 8 Edw. VII. c. 3, s. 156.

Requiring delivery up of weapons on nomination and polling days.

157. A returning officer or deputy returning officer may, during the nomination day and polling day, require any person within half a mile of a place of nomination or of a polling place to deliver to him any firearm, sword, or offensive weapon in the hands or personal possession of such person. 8 Edw. VII. c. 3, s. 157.

Armed persons not to come within one mile of nomination or polling place.

158. Except peace officers and the returning officer, the election clerk, the deputy returning officer, the poll clerk, and the constables and special constables appointed by the returning officer or the deputy returning officer for the orderly conduct of the nomination or poll, and the preservation of the public peace thereat, no person shall approach within the distance of one mile of a place of nomination, or of a polling place armed with any firearm, sword, or offensive weapon, unless called upon so to do by lawful authority. 8 Edw. VII. c. 3, s. 158.

Supply or use of party flags, etc., prohibited.

159.—(1) No person shall furnish or supply

(a) any ensign, standard, set of colours or other flag, or

(b) any ribbon, label or like favour

to or for any person with intent that it shall be carried, used or worn in the electoral district on polling day or within eight days before such day or during the continuance of the election by any person as a party flag or badge to distinguish the bearer or wearer and those who follow such party flag or badge as the supporters of any candidate or of the political or other opinions entertained or supposed to be entertained by a candidate.

Carrying party flags, badges, etc.

(2) No person shall carry, use or wear

(a) any ensign, standard, set of colours or other flag or

(b) any ribbon, label or like favour

as a party flag or badge within the electoral district on nomination day or polling day or within eight days before such

last mentioned day or during the continuance of the election.
8 Edw. VII. c. 3, s. 159.

SECRECY OF PROCEEDINGS.

160.—(1) Every person in attendance at a polling place or at the counting of votes shall maintain and aid in maintaining the secrecy of the voting. Maintaining secrecy of proceedings.

(2) No person shall interfere or attempt to interfere with a voter when marking his ballot paper, or attempt to obtain at the polling place information as to the candidate for whom a voter is about to vote or has voted. Interference with voters.

(3) No person shall communicate any information obtained at a polling place as to the candidate for whom a voter at such polling place is about to vote or has voted. 8 Edw. VII. c. 3, s. 160. Communicating information as to how voter is voting.

161. No person shall, directly or indirectly, induce or attempt to induce a voter to show his ballot paper after he has marked it, so as to make known to any person the name of the candidate for whom he has voted. 8 Edw. VII. c. 3, s. 161. Inducing voter to display ballot after marking.

162. No person shall communicate at any time to any person any information as to the number on the back of the ballot paper given to any voter at a polling place under the provisions of section 108, except to a Court or Judge lawfully requiring him so to do, or attempt to ascertain at the counting of the votes the number on the back of any such ballot paper. 8 Edw. VII. c. 3, s. 162. Communicating information as to number on back of ballot.

163. Subject to the provisions of section 100 a voter shall not show his ballot paper, when marked, to any person so as to allow the name of the candidate for whom he voted to be known. 8 Edw. VII. c. 3, s. 163. Voter not to display marked ballot.

164. Every returning officer and every officer, clerk, constable, agent and other person authorized to attend at a polling place, or at the counting of the votes, shall, before entering on his duties, take the oath of secrecy, Form 28. 8 Edw. VII. c. 3, s. 164. Oath of secrecy.

165.—(1) If a returning officer, election clerk, deputy returning officer or poll clerk becomes aware, or has reason to believe or suspect, that any provision of the law as to secrecy has been violated he shall communicate the particulars, with all convenient speed, to the Crown Attorney. Proceedings where officers aware of violation of secrecy.

(2) The Crown Attorney shall on receiving such information from such officer or from any other person forthwith enquire into the case and if proper prosecute the offender. 8 Edw. VII. c. 3, s. 105. Duty of Crown Attorney thereon.

No one compellable to disclose his vote.

166. A person who has voted shall not in any legal proceeding questioning the election or return be compelled to state for whom he voted. 8 Edw. VII. c. 3, s. 166.

CORRUPT PRACTICES AND OTHER ILLEGAL ACTS.

Bribery, who guilty of.

167.—(1) Every person who,

Bribing voter or procuring bribery by money.

(a) directly or indirectly, himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure, or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any person, in order to induce any voter to vote, or refrain from voting or corruptly does any such act on account of any voter having voted or refrained from voting at an election,

By gift or offer or promise of employment.

(b) directly or indirectly, himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises any office, place or employment, or promises to procure or to endeavour to procure any office, place or employment to or for any voter, or to or for any other person, in order to induce any voter to vote, or refrain from voting, or corruptly does any such act on account of any voter having voted or refrained from voting at an election,

To induce anyone to procure return of candidate.

(c) directly or indirectly, himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in the Assembly, or the vote of any voter at an election,

Receiving bribe to procure return of candidate.

(d) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, or promises or endeavours to procure the return of any person to serve in the Assembly, or the vote of any voter at an election,

Advancing money to be spent in corrupt practices.

(e) advances or pays, or causes to be paid, money to or to the use of any other person, with the intent that such money or any part thereof shall be expended in corrupt practices at an election, or knowingly pays or causes to be paid money to any person in discharge or repayment of money wholly or in part expended in corrupt practices at an election,

- (f) directly or indirectly, himself or by any other person on his behalf, on account of, and as payment for voting or for his having voted, or for illegally agreeing or having agreed to vote for any candidate at an election, or on account of, and as payment for his having illegally assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration, or for any office, place or employment, or the promise of any office, place or employment,
- (g) before or during an election, directly or indirectly, himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment for himself or any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at an election,
- (h) after an election, directly or indirectly, himself or by any other person on his behalf, receives any money or valuable consideration for having voted or refrained from voting, or for having induced any other person to vote or refrain from voting at an election,
- (i) in order to induce a person to allow himself to be nominated as a candidate, or to refrain from becoming a candidate, or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure, or endeavours to procure any office, place or employment for such person, or for any other person, or
- (j) in order to induce a person to withdraw from being a candidate at an election, directly or indirectly gives or lends, or offers or promises or agrees to give or lend, any money or valuable consideration to such person, or to any other person,

Applying for money or employment in consideration of voting.

Receiving money, office, etc., for having voted.

Receiving money corruptly after election.

Giving or promising office to induce candidate to stand or withdraw.

Bribing candidate to retire.

shall be guilty of bribery, and shall incur a penalty of \$200 and shall also on conviction be imprisoned for a term of six months. 8 Edw. VII. c. 3, s. 167 (1); 3-4 Geo. V. c. 5, s. 1.

(2) The actual personal expenses of a candidate, his reasonable expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising and other lawful and reasonable expenses in connection with the election, incurred by the candidate or any agent in good faith and without any corrupt intent, shall be

Saving as to personal expenses of candidates.

deemed to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act.

Saving as to
distribution
of political
literature.

(3) The distribution by a candidate or his agent of political pamphlets or other political literature; or the sending or causing to be sent to voters by a candidate or his agent, newspapers containing political articles, reports of political meetings or other matters of public interest during such election or for a reasonable time prior thereto shall not be deemed corrupt or illegal acts or a contravention of this Act. 8 Edw. VII. c. 3, s. 167 (2), (3).

Furnishing
meat, drink,
etc., forbidden,
except at resi-
dence of the
person fur-
nishing.

168.—(1) A candidate shall not nor shall any other person, provide or furnish meat, drink, refreshment or provision at the expense of such candidate or other person at a meeting of voters assembled for the purpose of promoting the election, previous to or during the election, or pay or promise or engage to pay therefor; but nothing herein contained shall extend to any meat, drink, refreshment or provision furnished to any such meeting of voters by or at the expense of any person at his usual place of residence. where such residence is a private house.

Penalty.

(2) Every person offending against the provisions of this section shall be guilty of a corrupt practice and shall incur a penalty of \$100. 8 Edw. VII. c. 3, s. 168.

Treating.

169.—(1) Every candidate who corruptly, himself or by or with any person, or by any other way or means on his behalf, at any time, either before or during an election, directly or indirectly gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays wholly or in part any expenses incurred for any meat, drink, refreshment or provision to or for any person, in order to be elected or for being elected, or for the purpose of corruptly influencing such person or any other person to vote or refrain from voting at an election, shall be guilty of a corrupt practice and shall incur a penalty of \$200 in addition to any other penalty to which he may be liable therefor.

Giving re-
freshments
prima facie
evidence of a
corrupt prac-
tice.

(2) The giving of meat, drink, refreshment or provision to voters extensively or generally, by a candidate, or by his agent, or the taking part therein by either of them, or giving the same wholly or partly at the expense of a candidate or his agent, shall *prima facie* be a corrupt practice within the meaning of this section.

Habit of
treating not
sufficient
answer.

(3) It shall not be a sufficient answer to a charge of a corrupt practice under this section that the person charged had been in the habit of treating. 8 Edw. VII. c. 3, s. 169.

Candidate
betting.

170.—(1) A candidate who, before or during the election makes a bet or wager, or takes a share or interest in, or in

any manner becomes a party to, a bet or wager, upon the result of the election in the electoral district or in any part thereof or on any event or contingency relating to the election, shall be guilty of a corrupt practice.

(2) A candidate or other person who provides money to be used by another in betting or wagering upon the result of the election in the electoral district or in any part thereof, or on any event or contingency relating to the election, shall be guilty of a corrupt practice. Providing money for betting.

(3) A person who for the purpose of influencing an election makes a bet or wager on the result thereof in the electoral district or in any part thereof, or on any event or contingency relating thereto, shall be guilty of a corrupt practice. Other persons. 8 Edw. VII. c. 3, s. 170.

171.—(1) A candidate who himself or by any other person on his behalf and every other person who:— Hiring conveyances to carry voters to poll.

(a) hires or promises to pay or pays for a conveyance to carry a voter to, or near or from or on the way to or from a polling place; or

(b) pays the travelling or other expenses of a voter in going to or returning from a polling place

and every person who for a valuable consideration provides or furnishes a conveyance knowing that it is to be used to carry a voter other than the hirer, to or near or from or on the way to or from a polling place shall be guilty of a corrupt practice and shall incur a penalty of \$100, and, if a voter, shall be disqualified from voting at the election; but this subsection shall not apply to the carrying of voters to the poll in the conveyance mentioned in clause (e) of subsection 2 of section 204. Exception.

(2) Every person who provides or furnishes transportation free of charge or at a diminished rate to a voter, to or near or from or on the way to or from a polling place, and whether passes or tickets or the like are or are not supplied shall be guilty of a corrupt practice and shall incur a penalty of \$100, and, if a voter, shall be disqualified from voting at the election. Furnishing transportation to voters.

(3) "Conveyance," for the purposes of this section, shall include a horse, team, carriage, cab, vehicle, boat or vessel. Hiring teams etc. 8 Edw. VII. c. 3, s. 171.

172. The giving or causing to be given to a voter on the nomination day or on polling day on account of his being about to vote or having voted, any meat, drink, refreshment or provision, or any money, ticket or order to enable him to procure the same, shall be a corrupt practice, and the person so offending shall incur a penalty of \$10. 8 Edw. VII. c. 3, s. 172. Providing refreshments on nomination day or polling day.

Undue
influence.

173.—(1) Every person who, directly or indirectly, himself, or by any other person on his behalf, uses or threatens to use force, violence, or restraint, or inflicts or threatens to inflict injury, damage, harm or loss, or in any manner practises intimidation upon or against a voter in order to induce or compel him to vote, or refrain from voting, or on account of his having voted or refrained from voting, or who, by abduction, duress, or false or fraudulent pretence, device or contrivance, impedes, prevents or otherwise interferes with the free exercise of the franchise of a voter, or thereby compels, induces or prevails upon a voter to vote or refrain from voting, shall be guilty of a corrupt practice and shall incur a penalty of \$200, and shall also upon conviction be imprisoned for one year.

Penalty.

Pretence that
ballot is not
secret.

(2) It shall be a false pretence within the meaning of this section to represent to a voter, directly or indirectly, that the ballot to be used, or the mode of voting at an election, is not secret. 8 Edw. VII. c. 3, s. 173.

Personation.

174.—(1) A person who at an election applies for a ballot paper in the name of some other person whether that name be that of a person living or dead, or of a fictitious person, or who having voted applies at the same election for a ballot paper in his own name or who votes more than once at the same election, shall be guilty of the offence of personation.

Penalty.

(2) A person who commits or who directly or indirectly aids or abets, counsels or procures the commission of the offence of personation shall be guilty of a corrupt practice and shall incur a penalty of \$400, and shall also on conviction be imprisoned for one year. 8 Edw. VII. c. 3, s. 174.

Procuring
appointment
as deputy re-
turning officer
or poll clerk
by fraud.

175. A person who procures an appointment as deputy returning officer or poll clerk by false pretence, deceit or other improper means, or who acts as deputy returning officer without lawful authority shall be guilty of a corrupt practice and shall incur a penalty of \$400, and shall also on conviction be imprisoned for one year. 8 Edw. VII. c. 3, s. 175.

Appointing
persons as
election officers
who have been
guilty of cor-
rupt practices.

176. A person who knowingly appoints an election clerk, a deputy returning officer or a poll clerk, who has at any time been found guilty by a competent tribunal of a corrupt practice or reported by an Election Court for a corrupt practice shall be guilty of a corrupt practice and shall incur a penalty of \$400. 8 Edw. VII. c. 3, s. 176.

Voting by per-
sons not
entitled to vote
to be a corrupt
practice.

177. A person who votes knowing that he has no right to vote, and a person who induces or procures any other person to vote, knowing that such other person has no right to vote, shall be guilty of a corrupt practice, and shall incur a penalty of \$200. 8 Edw. VII. c. 3, s. 177.

178. A person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or securing the election of another candidate, shall be guilty of a corrupt practice and shall incur a penalty of \$100, but the election of a candidate shall not be avoided by reason of a contravention of this section unless committed by him or by his agent. 8 Edw. VII. c. 3, s. 178.

Publishing false statement of withdrawal of candidate.

CONSEQUENCES OF CORRUPT PRACTICES.

179. If an Election Court determines and reports that a corrupt practice has been committed by a candidate or by his agent, whether with or without the actual knowledge and consent of the candidate, the election of the candidate shall, except in the case mentioned in section 180, be void. 8 Edw. VII. c. 3, s. 179.

Corrupt practices by candidate or his agent to avoid election.

180. If the Election Court determines that an agent of the candidate was guilty of a corrupt practice that would otherwise render the election void, and further finds that,

When Court finds candidate not personally guilty and result not affected.

- (a) no corrupt practice was committed at such election by the candidate personally, and that the corrupt practice of the agent was committed contrary to the order and without the sanction or connivance of the candidate,
- (b) the candidate took all reasonable means for preventing the commission of corrupt practices at such election,
- (c) the corrupt practice was of a trivial, unimportant and limited character, and that
- (d) in all other respects, so far as disclosed by the evidence, the election was free from any corrupt practice on the part of the candidate and of his agent,

then the election of the candidate shall not, by reason of the corrupt practice be void. 8 Edw. VII. c. 3, s. 180.

181. No candidate or other person shall be disqualified or subject to any disability or penalty for a corrupt practice, except upon the judgment of an Election Court. 8 Edw. VII. c. 3, s. 181.

When disqualification incurred.

182.—(1) Subject to the provisions of subsection 2 where an Election Court determines and reports that a corrupt practice has been committed, by or with the actual knowledge and consent of a candidate, then in addition to his election, if he has been elected, being void, the candidate, during the eight years next after the date of his being so found guilty, shall be incapable of being elected to and

Candidate guilty of corrupt practice disqualified for eight years.

of sitting in the Assembly or any municipal council and of being entered on any voters' list or registered as a voter and of voting at an election, and of holding any office at the nomination of the Crown or of the Lieutenant-Governor or any municipal office.

Saving where corrupt practice committed in excusable ignorance.

(2) If the Election Court or one of the Judges thereof finds that an act constituting in law a corrupt practice was committed by a candidate, or with his actual knowledge and consent, but without any corrupt intent, and in an ignorance which was involuntary and excusable, and that the evidence shewed that the candidate honestly desired, and in good faith endeavoured as far as he could, to have the election conducted according to law, the candidate shall not be subject to the penalties and disabilities which he would otherwise incur under the next preceding subsection. 8 Edw. VII. c. 3, s. 182.

Disqualification of persons other than candidates.

183.—(1) Every person other than a candidate found guilty of a corrupt practice in a proceeding in which, after notice of the charge, he has had an opportunity of being heard, or who upon his own evidence given on the trial of a petition has been found to have been guilty of a corrupt practice and has been reported therefor, unless such finding and report have been reversed or set aside on appeal under *The Ontario Controverted Elections Act* shall, during the eight years next after the date of his being found guilty, be subject to the penalties and disabilities mentioned in section 182.

Rev. Stat. c. 10.

Exemptions.

(2) No person shall be subject to the penalties and disabilities referred to in subsection 1 by reason of,

(a) a mere technical breach of law, or

(b) an act not being an intentional violation of law.

8 Edw. VII. c. 3, s. 183.

Appeal.

184. Where the Judges who constitute the Election Court disagree as to a corrupt practice having been committed by a candidate or his agent there may be an appeal as provided by *The Ontario Controverted Elections Act*, and if the Divisional Court determines that a corrupt practice was committed, then unless the court is of opinion that the case falls within section 180 the election shall be void, but the candidate shall not be disqualified. 8 Edw. VII. c. 3, s. 184.

Rev. Stat. c. 10.

Where second election held as result of protest. Effect of corrupt practices at first election.

185. If an election is set aside and a second election had the second election shall be deemed to be a new election and shall not be avoided by reason of corrupt practices committed at the former election other than the personal acts of the candidate or of his agent done with his actual knowledge and consent, but the new election shall not be

avoided for corrupt practices by the candidate at the former election or affecting the same which were not set up and proved at the trial and so adjudged by the Election Court as by law to involve the penalties and disabilities mentioned in section 182. 8 Edw. VII. c. 3, s. 185.

186. If on the trial of an election petition a candidate or his agent is proved to have committed a corrupt practice with respect to a voter, there shall be struck off from the number of votes given for such candidate one vote for each voter in respect to whom the corrupt practice is proved to have been committed. 8 Edw. VII. c. 3, s. 186.

Votes to be struck off on scrutiny when corrupt practice is proved.

187. If on the trial of an election petition, a candidate is proved to have personally engaged any person, as a canvasser or agent, knowing that he has, within eight years previous to such engagement, been found guilty by a competent tribunal of or reported by an Election Court for a corrupt practice, the election of such candidate shall be void. 8 Edw. VII. c. 3, s. 187.

Election of candidate to be void for employing agent previously found guilty of corrupt practice

188. If, at any time after a person has become disqualified, the witnesses or any of them on whose testimony he has become disqualified are convicted of perjury in respect of such testimony, a Divisional Court upon the motion of the person disqualified and upon being satisfied that such disqualification was procured by reason of perjury, may order that the disqualification shall thereafter cease and determine. 8 Edw. VII. c. 3, s. 188.

Removal of disqualification on proof that disqualification was procured by perjury.

189. Every executory contract, promise or undertaking, in any way referring to, arising out of, or depending upon an election, even for the payment of lawful expenses, or the doing of a lawful act, shall be void. 8 Edw. VII. c. 3, s. 189.

Executory contracts arising out of elections to be void.

190. No pecuniary penalty or forfeiture, shall be recoverable for a corrupt practice if it appears that the person charged and another person or other persons were together guilty of the act charged, either as giver and receiver, or as accomplices or otherwise, and that the person charged has previously *bona fide* prosecuted such other person or persons or any of them for the corrupt practice; but this provision shall not apply if the Court or Judge, before whom the person claiming the benefit thereof is charged, certifies that it clearly appears that the person so charged took the first step towards the commission of the offence, and that he was in fact the principal offender. 8 Edw. VII. c. 3, s. 190.

No statutory penalty for corrupt practice where the party charged has first prosecuted a party jointly liable.

Proviso.

OFFENCES AND PENALTIES.

GENERAL.

Returning Officers, etc., wilfully falsifying or altering list of voters to incur penalty.

191. A returning officer, deputy returning officer, or other person whose duty it is to deliver poll books or who has the custody of a certified list of voters' polling list or poll book, who wilfully makes any alteration or insertion in or omission from or in any way wilfully falsifies such certified list, polling list or poll book shall be guilty of a corrupt practice and shall incur a penalty of \$2,000, and shall also on conviction be imprisoned for one year. 8 Edw. VII. c. 3, s. 191.

Offences relating to ballot papers.

192. Every person who—

- (a) fraudulently alters, defaces or destroys a ballot paper or the initials of the deputy returning officer thereon; or
- (b) without authority supplies a ballot paper to any person; or
- (c) fraudulently places in a ballot box a paper other than the ballot paper which he is authorized by law to place therein; or
- (d) fraudulently delivers to the deputy returning officer to be placed in the ballot box any other paper than the ballot paper given to him by the deputy returning officer; or
- (e) fraudulently takes a ballot paper out of the polling place; or
- (f) without authority, destroys, takes, opens, or otherwise interferes with a ballot box or book or packet of ballot papers or a ballot paper or ballot in use or used for the purposes of an election; or
- (g) uses the authorized stamp for any purpose other than the stamping of ballot papers, or, not being a returning officer, has in his possession any such stamp or any counterfeit or imitation thereof; or
- (h) being a deputy returning officer, fraudulently puts his initials on the back of any paper purporting to be or capable of being used as a ballot paper at an election; or
- (i) with fraudulent intent, prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election; or
- (j) being authorized by the returning officer to print the ballot papers for an election, with fraudulent

intent prints more ballot papers than he is authorized to print; or

(k) attempts to commit any offence mentioned in this section,

shall be guilty of a corrupt practice and in the case of a returning officer, deputy returning officer or other officer engaged in the election, shall on conviction be liable to imprisonment for three years, and, in the case of any other person, shall on conviction be liable to imprisonment for one year. 8 Edw. VII. c. 3, s. 192.

193.—(1) A person who wilfully and maliciously destroys, injures or obliterates, or causes to be destroyed, injured or obliterated, a writ of election, or a return to a writ of election, or a poll book, voters' list, list of voters, polling list, certificate or affidavit, or other document or paper made, prepared or drawn according to or for the purpose of meeting the requirements of this Act or any of them, shall be guilty of a corrupt practice, and shall incur a penalty of \$2,000, and shall also on conviction be imprisoned for one year.

Persons unlawfully destroy-
ing, etc., docu-
ments relating
to elections
etc.

(2) A person who aids, abets, counsels or procures the commission of a violation of the next preceding subsection shall be guilty of a corrupt practice and shall incur a penalty of \$2,000, and shall also on conviction be imprisoned for one year. 8 Edw. VII. c. 3, s. 193.

Abettors
punishable.

194.—(1) A deputy returning officer who wilfully omits to put his initials on the back of a ballot paper in use for the purpose of an election, shall incur a penalty of \$20 in respect of every such ballot paper.

Penalty for
deputy return-
ing officer
omitting to
initial ballots.

(2) A deputy returning officer or poll clerk who refuses or neglects to perform any of the duties imposed upon him by sections 113 to 120 shall, for each refusal or neglect, incur a penalty of \$200. 8 Edw. VII. c. 3, s. 194.

Deputy re-
turning officer
or poll clerk
neglecting
duties.

195. A deputy returning officer or poll clerk who wilfully miscounts the ballots or otherwise makes up a false statement of the poll shall be guilty of a corrupt practice and shall incur a penalty of \$200. 8 Edw. VII. c. 3, s. 195.

Wilful mis-
conduct in
counting
ballots, etc.

196. A person who upon demand refuses to deliver up to a returning officer or deputy returning officer, any weapon as provided in section 157, shall incur a penalty of \$20. 8 Edw. VII. c. 3, s. 196.

Penalty for
refusing to
give up arms.

197. A person offending against any of the provisions of sections 158 and 159 shall incur a penalty not exceeding \$100. 8 Edw. VII. c. 3, s. 197.

Penalty for
carrying arms,
badges, etc.

Penalty for
violating
secrecy

198. A person who acts in contravention of sections 160, 161, 162, or 163 shall be liable, on conviction, to imprisonment for any term not exceeding six months. 8 Edw. VII. c. 3, s. 198.

Penalty to
person
aggrieved.

199. Every officer engaged in the election who is guilty of a wilful act or omission in contravention of this Act, shall in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved thereby the sum of \$400. 8 Edw. VII. c. 3, s. 199.

How penalties
under Act
recoverable.

200. Subject to the provisions of *The Ontario Controverted Elections Act*, and except as herein otherwise provided,—

(a) all pecuniary penalties imposed by this Act for offences not declared to be corrupt practices, and for offences not punishable by imprisonment alone, or in addition to a pecuniary penalty or fine, shall be recoverable by any one who sues for the same in any court of competent jurisdiction; and the Court shall order that in default of payment of the amount which the offender is condemned to pay, within the period fixed by the Court, he shall be imprisoned for a term in the discretion of the Court not exceeding one year unless the penalty and costs are sooner paid;

Statement of
plaintiff's
claim.

(b) it shall be sufficient for the plaintiff, in any such action, to allege that the defendant is indebted to him in the sum claimed, and the particular offence for which the action is brought, and that the defendant had acted contrary to this Act:

Limitation of
actions, mode
of trial.

(c) the action shall be commenced within one year next after the act committed, or the omission complained of, and not afterwards, and shall be tried by a Judge without a jury. 8 Edw. VII. c. 3, s. 200.

Prosecutions
for corrupt
practices
punishable by
imprisonment.

201. Prosecutions for penalties and punishments imposed by this Act for or in respect of corrupt practices and for offences for which imprisonment alone or in addition to a pecuniary penalty or fine is imposed shall be had and taken before an Election Court in the manner provided by *The Ontario Controverted Elections Act*. 8 Edw. VII. c. 3, s. 201.

Rev. Stat.
c. 10.

Writ, etc.,
need not be
produced at
trial.

202. In any proceeding under sections 200 and 201, it shall not be necessary on the trial to produce the writ of election or the return thereto, or the authority of the

returning officer founded upon the writ of election but general evidence shall be sufficient. 8 Edw. VII. c. 3, s. 202.

ELECTION EXPENSES.

203.—(1) Every candidate shall appoint an official agent ^{Appointment of official agent.} whose name and address shall be declared in writing to the returning officer, on or before the nomination day.

(2) In the event of the death or incapacity of an official agent, the candidate shall forthwith appoint another official agent in his place, and give notice to the returning officer of the name and address of the person appointed, which shall be forthwith published by the returning officer at the expense of the candidate in the manner provided by section 59. 8 Edw. VII. c. 3, s. 203. ^{On death or incapacity of an agent, appointment of another.}

204.—(1) No payment, except with respect to the personal expenses of a candidate, and no advance, loan or deposit shall be made by or on behalf of a candidate before, during or after the election, on account of the election, otherwise than through his official agent. ^{Payments not to be made except through official agent.}

(2) "Personal expenses" when used in this section shall include the following expenses, and payment therefor may lawfully be made by the candidate personally:— ^{"Personal expenses of candidate," what to include.}

- (a) reasonable and *bona fide* rent or hire of halls or other places used by the candidate personally in which to address public meetings of voters, and the expenses incurred in heating, lighting and cleaning the same;
- (b) reasonable, ordinary and necessary travelling and living expenses of the candidate;
- (c) reasonable, ordinary and necessary travelling and living expenses of one speaker for each meeting, who accompanies the candidate and travels with him for the purpose of speaking at a public meeting to be addressed by the candidate;
- (d) reasonable and ordinary charges for the hire and keep of horses and hire of conveyances for the use of the candidate in travelling to and from public meetings and in canvassing in the electoral district, and reasonable and ordinary charges for the services and maintenance of a driver;
- (e) reasonable and ordinary charges for use by the candidate personally of not more than one conveyance, and the services of a driver, on the polling day.

Onus probandi.

(3) The onus of showing that the personal expenses paid by the candidate were fair, reasonable and proper and not in excess of what is ordinarily paid for similar services and accommodation, shall be upon the candidate.

Receipt of ordinary and reasonable charges when not to disqualify voter.

(4) The contracting for or the receipt of the ordinary and reasonable charges,

(a) by the owner or possessor of a hall or room in which to hold *bona fide* public meetings for the purposes of the election, or

(b) by a printer for printing voters' lists, election addresses or advertisements or notices of election meetings, or

(c) by a regularly established livery-keeper for the hire of horses and vehicles used in connection with and for the proper purposes of the election, and not for carrying voters otherwise than by the candidate as provided by clause (e) of subsection 2,

shall be lawful and shall not disqualify him from voting
8 Edw. VII. c. 3, s. 204.

Claims on candidate in respect of any election, when to be sent in to agent.

205.—(1) Every person who has any claim against a candidate for or in respect to an election, shall send in such claim within one month from the day of the declaration of the result of the election, to the official agent of the candidate, otherwise he shall be barred of his right to recover the same.

Case of death of person making claim.

(2) In case of the death within such month of any person having such claim, his legal representative shall send it in, within one month after probate, or administration has been obtained otherwise the right to recover the same shall be barred.

Case of death of agent.

(3) In case of the death of the official agent or of his incapacity to act and no other agent having been appointed such claim may be sent in or delivered to the candidate.

Agent not to pay without authority of candidate.

(4) No such claim shall be paid without the authority of the candidate, and the approval of the official agent.
8 Edw. VII. c. 3, s. 205.

Payment of lawful accounts rendered after one month from election.

206.—(1) Notwithstanding anything in the next preceding section contained, any claim which would have been payable if sent in within one month of the day of the declaration, may be paid by the candidate through his official agent after that time, if such claim is approved by a Judge of the Supreme Court, or by the Judge of the county court of a county in which the electoral district or some part of it is situate.

(2) All claims allowed by a Judge shall, within one week thereafter be advertised by the returning officer at the expense of the candidate in the same newspapers in which the statement of the other election expenses was published. 8 Edw. VII. c. 3, s. 206.

207.—(1) A detailed statement of all election expenses incurred by or on behalf of a candidate, including payments in respect of his personal expenses, shall within two months after the election, or where, by reason of the death of the creditor, no claim has been sent in within such period of two months, then within one month after such claim has been sent in, be made out and signed by the official agent, who has paid the same, or by the candidate in case of payments made by him, and delivered, with the bills and vouchers relating thereto, to the returning officer. Statement of election expenses, etc., to be sent by agent to Returning Officers.

(2) The returning officer within fourteen days after receiving the statement, shall publish at the expense of the candidate an abstract thereof, in a newspaper published or circulating in the electoral district. Abstract thereof to be published.

(3) An agent or candidate who makes default in delivering the statement to the returning officer, shall incur a penalty not exceeding \$25 for every day during which he so makes default; Penalty for default in delivering statement.

(4) An agent or candidate who wilfully furnishes to the returning officer an untrue statement shall incur a penalty of \$400. 8 Edw. VII. c. 3, s. 207. Penalty for false statement.

208. The returning officer shall preserve all such bills and vouchers, and shall during the six months next after they have been delivered to him permit any voter to inspect the same on payment of a fee of twenty-five cents. 8 Edw. VII. c. 3, s. 208. Returning Officer to preserve bills, etc., and allow inspection.

FEEES AND EXPENSES OF RETURNING OFFICERS, ETC.

209.—(1) The fees and expenses in Schedule B mentioned shall be allowed to the officers therein mentioned for their services and disbursements in respect of the matters in the said Schedule specified. Tariff of fees.

(2) In addition to such fees and expenses there shall be allowed to the returning officers and other officers and clerks employed at the election the actual expenses incurred for printing, postage and the transmission of anything required to be transmitted and reasonable fees and allowances for other services rendered under this Act. Payment of fees and expenses of Returning Officers.

(3) Such fees, expenses and disbursements shall be taxed by the Auditor of Criminal Justice Accounts at Toronto, or such officer as may be designated for that purpose by the Lieutenant-Governor and the amount certified by him

shall be paid to the returning officer by the Treasurer of Ontario out of the Consolidated Revenue Fund and shall be disbursed by the returning officer to the officers and persons entitled to the same and he shall account therefor and report to the Provincial Secretary. 8 Edw. VII. c. 3, s. 209.

Additional
allowances in
certain cases.

210. The Lieutenant-Governor in Council may make regulations providing for the remuneration of the returning officers for services under sections 124 to 129, and for the payment to the returning officer for any electoral district specified in such regulations in which the conduct of the election is attended with special difficulties owing to the remoteness of the polling places, the difficulty of transportation or the extent of the territory comprised in the electoral district of such additional amount as may be deemed just and reasonable. 8 Edw. VII. c. 3, s. 210.

SCHEDULE A.

FORM 1.

(Referred to in Section 25 (1).)

To be put up at all Polling Places.

NOTICE AS TO SECRECY OF VOTING.

It is the sworn duty of every person in attendance at this polling place, or at the counting of the votes, not to attempt to ascertain how any person is about to vote or has voted; and not to communicate any information obtained at the polling place which may enable or assist any person to ascertain how any person has voted.

It is further the sworn duty of every such person, by all proper means to maintain, and aid in maintaining, the absolute secrecy of the voting at this polling place.

Any person who acts in contravention of his duty in any of the said particulars is liable to imprisonment for any term not exceeding six months.

By *The Ontario Election Act*, it is further provided, that no person shall destroy, take, open or otherwise interfere with any ballot box or book or packet of ballot papers or a ballot paper or ballot in use for the purposes of the election, or shall attempt to do so; and that any Returning Officer, Deputy Returning Officer or other officer engaged in the election who is guilty of any violation of that provision shall be liable to imprisonment for three years, and any other person guilty of such violation to imprisonment for one year. (*Section 192.*)

The said Act further provides that, in addition to every other penalty and liability, any officer engaged in the election who is guilty of any wilful act or omission in contravention of the Act, shall forfeit to any person aggrieved thereby the sum of \$400. (*Section 199.*)

A. B.,

Clerk of the Crown in Chancery.

8 Edw. VII. c. 3, Form 1.

FORM 3.

(Referred to in Section 36.)

OATH OF RETURNING OFFICER.

I, A. B., Returning Officer for the Electoral District of _____, swear. *(or solemnly affirm)* that I am legally qualified to act as Returning Officer for the said Electoral District, and that I will act faithfully in that capacity, without partiality, fear, favour or affection: So help me God.

Sworn *(or affirmed)* before me at
the _____ of this
day of _____, 19 ____.

A Commissioner, etc.
(or as the case may be).
See section 6.

A. B.,
Returning Officer

8 Edw. VII. c. 3, Form 3.

FORM 4.

(Referred to in Section 37.)

PROCLAMATION OF THE RETURNING OFFICER DECLARING THE TIME AND
PLACE FOR THE NOMINATION OF CANDIDATES, AND THE DAY FOR
OPENING THE POLL.

PROCLAMATION.

Electoral District of _____

Public Notice is hereby given that in obedience to His Majesty's Writ to me directed, and bearing date the _____ day of _____, 19 ____, I require the presence of the voters at the Town Hall or *(as the case may be)*, in the County *(or Township, or City, or Town)* of _____ on the _____ day of _____, 19 ____, from noon until two o'clock in the afternoon, for the purpose of nominating a person *(or persons, as the case may be)* to represent them in the Legislative Assembly; and notice is further given that in case a poll is demanded and allowed in the manner by law prescribed, such poll will be opened on the _____ day of _____, 19 ____, from the hour of nine o'clock in the forenoon until five o'clock in the afternoon as follows:—

For the polling subdivision No. 1, consisting of *(or bounded as follows:—or otherwise describing it clearly)* at _____ *(describing the polling place and so continuing for all the other polling subdivisions and polling places in the electoral district).*

And further, that at *(describe place where votes will be added up)* on the _____ day of _____ at the hour of _____, I shall open the ballot boxes, add up the votes given for the several candidates and declare to be elected the one *(or as the case may be)* having the largest number of votes.

Of which all persons are hereby required to take notice, and to govern themselves accordingly.

God Save the King.

Given under my hand at _____, this _____ day of _____, in the year 19 ____.

A. B.,
Returning Officer.

8 Edw. VII. c. 3, Form 4.

FORM 5.

(Referred to in Section 43 (1).)

COMMISSION OF ELECTION CLERK.

To *E. F.* (*set forth his residence and occupation*).

In my capacity of Returning Officer for the Electoral District of _____, I hereby appoint you to be my Election Clerk, to act in that capacity at the approaching election for the said Electoral District, which election will be opened by me on the _____ day of _____, 19____, (*the date to be inserted here is the day of nomination*).

Given under my hand this _____ day of _____, 19____.

A. B.,
Returning Officer.

8 Edw. VII. c. 3, Form 5.

FORM 6.

(Referred to in Section 44.)

OATH OF ELECTION CLERK.

I, *E. F.*, appointed Election Clerk for the Electoral District of _____, swear (*or solemnly affirm*) that I am legally qualified to act as Election Clerk and that I will act faithfully in that capacity and also in that of Returning Officer, if required to act in that capacity, without partiality, fear, favour or affection: So help me God.

Sworn (*or affirmed*) before me at
the _____ of _____ this
day of _____, 19____.
A Commissioner, etc.
(*or as the case may be*).
See section 6.

E. F.,
Election Clerk.

8 Edw. VII. c. 3, Form 6.

FORM 7.

(Referred to in Section 56.)

PROCLAMATION WHICH THE RETURNING OFFICER IS TO CAUSE TO BE READ ON NOMINATION DAY.

OYEZ! OYEZ! OYEZ!

All persons are commanded and strictly enjoined to keep silence while His Majesty's Writ for the present Election is publicly read.

God Save the King.

8 Edw. VII. c. 3, Form 7.

FORM 8.

(Referred to in Section 60.)

WITHDRAWAL OF CANDIDATE.

(Electoral District of _____)
 1, _____ a candidate nominated for the above
 electoral district hereby withdraw.

Dated at _____, this _____ day of _____, 19 ____.

.....
 Candidate.

Witness.

8 Edw. VII. c. 3, Form 8.

FORM 9.

(Referred to in Section 63.)

COMMISSION OF DEPUTY RETURNING OFFICER.

To *G. H.* (*Insert his residence and occupation*).

In my capacity of Returning Officer for the Electoral District of _____ I hereby appoint you to be Deputy Returning Officer for Polling Place No. _____, of the Township (*or as the case may be*) of _____, in the said Electoral District, there to take the votes of the voters and you are hereby authorized and required to open and hold the poll at the said Polling Place on the _____ day of _____, 19 ____, at nine o'clock in the forenoon, at (*here describe particularly the place in which the poll is to be held*), and there to keep the said poll open during the hours prescribed by law, and to do and perform in such polling place all acts and duties required to be performed by the Deputy Returning Officer appointed to act therefor, and after counting the votes given, to return to me forthwith the ballot box sealed with your seal and enclosing the ballots, envelopes, polling list, and other documents required by law, together with this Commission.

Given under my hand this _____ day of _____, 19 ____.

A. B.,
 Returning Officer.

8 Edw. VII. c. 3, Form 9.

FORM 10.

(Referred to in Section 64.)

OATH OF DEPUTY RETURNING OFFICER.

I, *G. H.*, appointed Deputy Returning Officer for Polling Place No. , of the Township *(or as the case may be)* of , swear *(or solemnly affirm)* that I am legally qualified to act as Deputy Returning Officer and that I will act faithfully, in that capacity, without partiality, fear, favour or affection: So help me God.

Sworn <i>(or affirmed)</i> before me at the of this day of , 19 . A Commissioner, etc. <i>(or as the case may be).</i> <i>See section 6.</i>	}	<i>G. H.</i> , Deputy Returning Officer.
---	---	---

8 Edw. VII. c. 3, Form 10.

FORM 11.

(Referred to in Section 70 (9).)

AFFIDAVIT OF PRINTER.

Electoral District of

I,

swear *(or solemnly affirm)*.

(1) That by direction of the Returning Officer for the above named Electoral District I printed the ballot papers for use at the election to be held on the day of 19 , *(insert date of polling)* on the paper furnished by him for that purpose.

(2) That the annexed form shows the description of the ballot papers printed by me as aforesaid.

(3) That I supplied the Returning Officer with
of such ballot papers.

(4) That no other of such ballot papers were printed by or supplied by me to anyone.

Sworn <i>(or affirmed)</i> before me at the of this day of , 19 . A Commissioner, etc. <i>(or as the case may be).</i> <i>See section 6.</i>	}
---	---

8 Edw. VII. c. 3, Form 11.

FORM 12.

(Referred to in Section 70.)

FORM OF BALLOT PAPER.

Front.

The black line above the first name shall extend to the upper edge, and the black line below the last name shall extend to the lower edge of the ballot paper, and all black lines be prolonged to the edge of the paper. The black margin to the left represents the counterfoil and the space to the left of the counterfoil represents the stub. There shall be a line of perforations between the ballot and the counterfoil and between the counterfoil and the stub.

I WM. R. BROWN
of the City of Toronto, Barrister.

2 FRANK HAMON
of the City of Toronto, Artist.

3 JOSEPH O'NEIL
of the City of Toronto, Gentleman.

4 JOHN R. SMITH
of the City of Toronto, Merchant.

FORM 12.—(Continued.)

*Form of Ballot Paper.**Back.*

No. 325

No. 325

POLL BOOK

No.

D. R. O.
INITIALS.ELECTORAL DISTRICT
OF

19

FORM 13.

(Referred to in Sections 25 and 72.)

DIRECTIONS FOR THE GUIDANCE OF VOTERS.

The voter is to vote only for one candidate, unless more than one member is to be elected for the electoral district, in which case he may vote for as many candidates as are to be elected.

Where there are more seats than one the voter will receive one ballot paper for each seat and may vote for one candidate only for each seat.

The voter shall go into one of the compartments and, with a black lead pencil there provided, place a cross within the white space containing the name of the candidate or within the white spaces containing the names of the candidates for whom he votes, thus X.

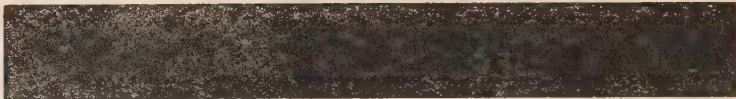
The voter shall then fold the ballot paper so that the initials and stamp on the back and the number on the counterfoil can be seen without opening it; he shall then return the ballot paper so folded to the Deputy Returning Officer, who shall, in full view of those present, including the voter, remove the counterfoil, destroy the same, and place the ballot paper in the ballot box; the voter shall then forthwith leave the polling place.

If a voter inadvertently spoils a ballot paper so that he cannot conveniently use it as he desires, he may return it to the Deputy Returning Officer, who will give him another.


If the voter votes for more candidates than he is entitled to vote for, or places any mark on the ballot paper by which he can be identified, his vote will be void and will not be counted.

If the voter fraudulently takes a ballot paper out of the polling place, or fraudulently delivers to the Deputy Returning Officer, to be placed in the ballot box, any other paper than the ballot paper given him by the Deputy Returning Officer, he will be liable to imprisonment for one year.

In the following form of ballot paper, given for illustration, the candidates are Wm. R. Brown, Frank Hamon, Joseph O'Neil and John R. Smith, and the voter has marked his ballot paper in favour of John R. Smith and the counterfoil has been detached.




I WM. R. BROWN
of the City of Toronto, Barrister.



2 FRANK HAMON
of the City of Toronto, Artist.



3 JOSEPH O'NEIL
ot the City of Toronto, Gentleman.



4 JOHN R. SMITH
of the City of Toronto, Merchant.

X

FORM 14.

(Referred to in Section 73.)

CERTIFICATE OF CLERK OF MUNICIPALITY.

Showing date fixed for the assessor to begin to make the assessment roll and the last day on which a complaint could be made to the County Judge under The Ontario Voters' Lists Act:

Electoral District of

I, _____ Clerk of the Municipality of _____ in the County of _____ do hereby certify that the time fixed for the assessor to begin to make the assessment roll on which the voters' list for the said municipality proper to be used for the purposes of the election to be held on the _____ day of _____ 19____, (*insert date of polling*) is based, was the _____ day of _____ 19____, and that the last day on which a complaint could be made to the Judge under *The Ontario Voter's Lists Act* was the _____ day of _____ 19____.

Dated this _____ day of _____ 19____.

A. B.,
Clerk.

8 Edw. VII. c. 3, Form 14.

FORM 15.

(Referred to in Sections 81 (1), 84.)

COMMISSION OF POLL CLERK.

To I. J. (*Insert his residence and occupation*).

In my capacity of Deputy Returning Officer for the Polling Place No. _____, of the Township (*or as the case may be*), I hereby appoint you to be Poll Clerk for the said Polling Place.

Given under my hand _____, this _____ day of _____, 19____.

G. H.,
Deputy Returning Officer.

8 Edw. VII. c. 3, Form 15.

FORM 16.

(Referred to in Sections 81, 83 (1).)

OATH OF POLL CLERK.

I, *I. J.*, appointed Poll Clerk for Polling Place No. _____ of the Township *(or as the case may be)* swear *(or, solemnly affirm)* that I am legally qualified to act as Poll Clerk and that I will act faithfully in that capacity and also in that of Deputy Returning Officer, if required to act in that capacity according to law, without partiality, fear, favour or affection:
So help me God.

Sworn *(or affirmed)* before me at
the of this
day of , 19 .

A Commissioner, etc
(or as the case may be).
See section 6.

I. J.,
Poll Clerk.

8 Edw. VII. c. 3, Form 16.

FORM 17.

(Referred to in Section 95.)

FORM OF OATH IN ORDINARY CASES TO BE ADMINISTERED TO A VOTER.

*(Letters refer to notes at end of Form.)*You swear *(a)*

1. That you are the person named or intended to be named by the name of _____ in the polling list now shown to you, *(or where a voter votes on a certificate given under section 88, that you are the person named in the certificate now shown to you).*

2. That you are of the full age of twenty-one years, and are a British subject by birth or naturalization, and are not a citizen or a subject of any foreign country.

3. That you have resided within the Dominion of Canada for the nine months next preceding the *(b)* _____ day of 19 _____, *(or at the option of the voter)* that you have resided within the Dominion of Canada for the twelve months next preceding the *(c)* _____ day of 19 _____.

4. That you were on the said day in good faith a resident of and domiciled in the municipality on the list of which you are entered; that you have resided in this electoral district continuously from the said day; *(d)* and that you are now actually residing and domiciled therein.

OR *in the case of a clergyman or of a High or Public or Separate school teacher voting under section 20, in lieu of paragraph 4.*

[4. That you were on the said day in good faith a resident of and domiciled in the municipality on the list of which you are entered.

(a) That you are a clergyman (*or a High or Public or Separate school teacher, as the case may be*).

(b) That you are still a resident of Ontario.

(c) That you have resided in this electoral district continuously from the said day until within three months next preceding this election.

(d) That you are not entitled to vote in any other electoral district.]

5. That you are entitled to vote at this election and at this polling place.

6. That you have not voted before at this election, at this or at any other polling place.

7. That you have not received anything, nor has anything been promised you, directly or indirectly, to induce you to vote at this election, or for loss of time, travelling expenses, hire of conveyance, or any service whatever connected with this election.

OR at the option of the Voter in lieu of paragraph 7.

[7. That you have not received anything, nor has anything been promised you, directly or indirectly, to induce you to vote or refrain from voting at this election. That you have not received nor do you expect to receive anything for loss of time, travelling expenses, hire of conveyance, or any service whatever connected with this election, except what has been *bona fide* earned by you and may be lawfully paid to you under *The Ontario Election Act* by or through the Returning Officer or Deputy Returning Officer or other proper public officer out of public moneys without committing a corrupt practice, and except what has been *bona fide* earned by you and has been or may be lawfully paid to and received by you by or on behalf of the candidate or otherwise under *The Ontario Election Act*, and notwithstanding the receipt or expectation of which you are entitled by law to vote.]

8. And that you have not, directly or indirectly, paid or promised anything to any person to induce him to vote or to refrain from voting at this election.

So help you God.

NOTE.—(a) If the voter is a person who may by law affirm in civil cases then for “swear” substitute “solemnly affirm.”

(b) The date to be inserted is the date fixed by law or by a by-law authorized by Statute for the assessor to begin to make the assessment roll.

(c) The date to be inserted is the last day for making a complaint to the County Judge under *The Ontario Voters' Lists Act*.

(d) In case the voter has been temporarily absent, insert the words following “except occasionally or temporarily, or as a member of a permanent militia corps enlisted for continuous service, or on service as a member of the active militia, or as a student in attendance at an institution of learning in the Dominion of Canada, that is to say (*here name institution*)” as the case may be.

FORM 18.

(Referred to in Section 95.)

FORM OF OATH TO BE ADMINISTERED TO A MANHOOD SUFFRAGE VOTER
AT ELECTIONS TO WHICH THE MANHOOD SUFFRAGE REGISTRATION
ACT APPLIES.

You swear (a)

1. That you are the person named or intended to be named by the name of _____ on the polling list now shown to you (*or, where the voter votes on a certificate given under section 88, that you are the person named in the certificate now shown to you*).

2. That you are of the full age of twenty-one years and are a British subject by birth or naturalization, and are not a citizen or a subject of any foreign country.

3. That you have resided within the Dominion of Canada for the twelve months next preceding the (b) _____ day of _____, 19 . (c).

4. That you were on the said day and for the three months next preceding the same in good faith a resident of and domiciled in this municipality and that you are now actually residing and domiciled in this electoral district; (*and in the case of any municipality divided into two or more electoral districts and of any municipality parts of which are situated in two or more electoral districts*); that you have resided in this electoral district for the thirty days next preceding the said day, and continuously from the said day, and that you are now actually residing and domiciled therein.

5. That you are entitled to vote at this election and at this polling place.

6. That you have not voted before at this election, at this or at any other polling place.

7. That you have not received anything, nor has anything been promised you, directly or indirectly, to induce you to vote at this election, or for loss of time, travelling expenses, hire of conveyance, or any service whatever connected with this election.

OR at the option of the Voter in lieu of paragraph 7.

[7. That you have not received anything, nor has anything been promised you, directly or indirectly, to induce you to vote or refrain from voting at this election. That you have not received nor do you expect to receive anything for loss of time, travelling expenses, hire of conveyance, or any other service whatever, connected with this election, except what has been *bona fide* earned by you and may be lawfully paid to you under *The Ontario Election Act* by or through the Returning Officer or Deputy Returning Officer or other proper public officer out of public moneys without committing a corrupt practice, and except what has been *bona fide* earned by you and has been or may be lawfully paid to and received by you by or on behalf of the candidate or otherwise under *The Ontario Election Act*, and notwithstanding the receipt or expectation of which you are entitled by law to vote.]

8. And that you have not, directly or indirectly, paid or promised anything to any person to induce him to vote or to refrain from voting at this election.

So help you God.

NOTE.—(a) If the voter is a person who may by law affirm in civil cases then for “swear” substitute “solemnly affirm.”

(b) Insert here the day of the first sittings held for the registration of Manhood Suffrage Voters on which list of voters is based.

(c) In case the voter has been temporarily absent for any of the purposes allowed by law, insert the words following “except occasionally or temporarily, or as a member of a permanent militia corps enlisted for continuous service, or on service as a member of the active militia, or as a student at an institution of learning in the Dominion of Canada, that is to say (*here name institution*)” as the case may be.

8 Edw. VII. c. 3, Form 18.

FORM 19.

(Referred to in Section 95.)

FORM OF OATH TO BE ADMINISTERED TO A VOTER IN TERRITORY WITHOUT MUNICIPAL ORGANIZATION.

You swear (a)

1. That you are the person named or intended to be named by the name of _____ in the polling list now shown to you (*or where the voter votes on a certificate given under section 88 that you are the person named in the certificate now shown to you.*)

2. That you are of the full age of twenty-one years and are a British subject by birth or naturalization, and are not a citizen or a subject of any foreign country.

3. That you have resided within the Dominion of Canada for the nine months next preceding the (b) _____ day of 19 _____.

4. That you were on the said day in good faith a resident of and domiciled in the territory for which the voters' list was prepared, and that you have resided in this electoral district continuously from the said day (c), and that you are now actually residing and domiciled therein.

OR *in the case of a clergyman or a High or Public or Separate school teacher voting under section 20 in lieu of paragraph 4.*

[4. That you were on the said day in good faith a resident of and domiciled in the territory for which the voters' list was prepared.

(a) That you are a clergyman (*or a High or Public or Separate school teacher, as the case may be.*)

(b) That you are still a resident of Ontario.

(c) That you have resided in this Electoral District continuously from the said day until within three months next preceding this election.

(d) That you are not entitled to vote in any other electoral district.]

5. That you are entitled to vote at this election and at this polling place.

6. That you have not voted before at this election, at this or at any other polling place.

7. That you have not received anything, nor has anything been promised you directly or indirectly, either to induce you to vote at this election or for loss of time, travelling expenses, hire of conveyance or any service whatever connected with this election.

OR at the option of the Voter in lieu of paragraph 7.

[(7). That you have not received anything, nor has anything been promised you, directly or indirectly, to induce you to vote or refrain from voting at this election. That you have not received nor do you expect to receive anything for loss of time, travelling expenses, hire of conveyance or any service whatever connected with this election, except what has been *bona fide* earned by you and may be lawfully paid to you under *The Ontario Election Act* by or through the Returning Officer or Deputy Returning Officer or other proper public officer out of public moneys without committing a corrupt practice, and except also what has been *bona fide* earned by you and has been or may be lawfully paid and received by you by or on behalf of the candidate or otherwise under *The Ontario Election Act*, and notwithstanding the receipt or expectation of which you are entitled by law to vote.]

8. And that you have not directly or indirectly paid or promised anything to any person, to induce him to vote or to refrain from voting at this election. So help you God.

NOTE.—(a) If the voter is a person who may by law affirm in civil cases, then for “swear” substitute “solemnly affirm.”

(b) The date to be here inserted is the day fixed by proclamation under Part III. of *The Ontario Voters’ Lists Act* for beginning to make the voters’ list.

(c) In case the voter has been temporarily absent for any of the purposes allowed by law, insert the words following “except occasionally or temporarily or as a member of a permanent militia corps enlisted for continuous service, or on service as a member of the active militia, or as a student in attendance at an institution of learning in the Dominion of Canada, that is to say (*here name institution*)” as the case may be.

8 Edw. VII. c. 3, Form 19.

FORM 20.

(Referred to in Section 100 (2).)

FORM OF OATH OF INABILITY TO READ.

I, A. B., of _____ swear (or solemnly affirm) that I am unable to read [or that I am from physical incapacity unable to mark a ballot paper, (*as the case may be.*)]

Sworn (or affirmed) before me at _____
in the County of _____
this _____ day of _____, 19 ____
Having been first read over to the
above named A. B., and signed by
him in my presence with his mark.

A.B. (His **X** mark.)

Deputy Returning Officer.

8 Edw. VII. c. 3, Form 20.

FORM 21.

(Referred to in Sections 117 (1), 138.

STATEMENT OF THE POLL AFTER COUNTING THE BALLOTS.

Polling Place No.
Electoral District of

Number of Ballot Papers received from the Return- ing Officer.....		
Number of Ballots cast for.....		
“ “ “		
“ “ “		
“ “ “		
“ “ “		
Number of Ballot Papers declined (Section 107)...		
Number of Ballot Papers taken from polling place (Section 107)		
Number of Ballot Papers cancelled (Section 109) ..		
Number of Ballots rejected (Section 114).....		
Number of Ballot Papers not used and returned) ..		
Totals		

We hereby certify that the above statement is correct.

Dated at , 19 .

A. B.,
Deputy Returning Officer.

Poll Clerk.

(Candidates or agents may also sign.)

NOTE.—Where there are separate seats for an Electoral District there must be separate statements for each seat.

FORM 22.

(Referred to in Section 117 (3).)

CERTIFICATE TO BE DELIVERED TO CANDIDATES, ETC.

I, the undersigned, Deputy Returning Officer for polling place No. in the of in the electoral district of , do hereby certify that, at the election held this day, for a member to serve in the Legislative Assembly, the hereinafter mentioned candidates received the number of ballots set opposite their respective names, viz:—

NAMES OF CANDIDATES.	NUMBER OF BALLOTS.
.....
.....
.....
.....
.....
.....
.....

and also that ballot papers were rejected.

Dated at
this day of , 19 .

G. H.,
Deputy Returning Officer.
8 Edw. VII. c. 3, Form 22.

FORM 23.

(Referred to in Section 118.)

OATH OF THE POLL CLERK AFTER CLOSING OF THE POLL.

I, Poll Clerk for Polling Place No. , of the Electoral District of , swear (or solemnly affirm) that the poll book for the said polling place kept under the direction of G. H., who acted as Deputy Returning Officer, has been kept by me correctly to the best of my skill and judgment; that the total number of votes polled according to the said poll book is ; and that to the best of my knowledge and belief it contains a true and exact record of the voters who voted at the said polling place.

Sworn (or affirmed)
before me at
this day of
19 .

A Commissioner, etc.
(or as the case may be).
See section 6.

I. J.,
Poll Clerk.

8 Edw. VII. c. 3, Form 24.

FORM 24.

(Referred to in Section 120 (1).)

OATH OF POLL CLERK OR MESSENGER WHERE THE DEPUTY RETURNING
OFFICER IS UNABLE TO DELIVER THE BALLOT BOX TO THE RETURN-
ING OFFICER.

I, swear (or solemnly affirm) that I am the
person to whom Deputy Returning Officer for
Polling Place No. of the of
in the Electoral District of entrusted
the ballot box for the said polling place to be delivered to
the Returning Officer; that the ballot box which I delivered
to the Returning Officer this Day, is the ballot box I so received;
that I have not opened it and that it has not been opened by any
other person since I received it from the Deputy Returning
Officer.

So help me God.

Sworn (or affirmed) before
me at this
day of 19 .

A Commissioner, etc.
(or as the case may be).
See section 6.

8 Edw. VII. c. 3, Form 25.

FORM 26.

(Section 145.)

Statement by Returning Officer respecting Votes Polled and Ballot Papers used at the Polling Places of the Electoral District of _____, 19____.

Electoral District.	Names of candidates and number of votes polled for each.	Voters at each Polling Place.	Ballot papers sent out, and how disposed of in each Polling Place.	Remarks.
		Total number of votes polled.	Number of names remaining un-poll'd.	
		Number of names on the Polling Lists.	Number of ballot papers sent out to each Polling Place.	
		Used ballot papers.	Unused ballot papers.	
		Rejected ballot papers.	Cancelled ballot papers.	
		Declined ballot papers.	Ballot papers taken from polling places.	

8 Edw. VII. c. 3, Form 26.

FORM 27.

(Referred to in Section 146.)

AFFIDAVIT TO BE TAKEN BY RETURNING OFFICER AFTER TRANSMITTING
HIS RETURN TO THE CLERK OF THE CROWN IN CHANCERY.

I, _____ Returning Officer for the Electoral District
of _____ swear (or affirm)

1. That, of the packets received by me as such Returning Officer from the Deputy Returning Officers in respect of the recent election for the said Electoral District, I have not opened or permitted to be opened, any of the envelopes containing the ballot papers.

2. That I have not opened, or permitted to be opened, any of the packets so received except those authorized and directed to be opened by a Returning Officer under *The Ontario Election Act*.

3. That none of the other packets were opened by any person since they were returned to me by the Deputy Returning Officers, (or, in the case of a recount add, except by the Judge of the County Court, on a recount).

4. That I have not ascertained and have not attempted to ascertain, from the ballot papers or other contents of any of the said packets how any person voted.

5. That I have this day transmitted to the Clerk of the Crown in Chancery my return in respect of the said election.

So help me God.

Sworn (or affirmed) before
me at _____ this
day of _____ 19 ____ .

A Commissioner, etc.
(or as the case may be).
See section 6.

8 Edw. VII. c. 3, Form 27.

FORM 28.

(Referred to in Section 164.)

OATH OF SECRECY.

Electoral District of

Polling Place No.

I, _____ swear (or solemnly affirm)

1. That I will not attempt to ascertain, and will by every means in my power prevent any other person from ascertaining how any person is about to vote or shall have voted at this election save and except as may be necessary and proper in the case

of persons blind or unable to read, or incapable of marking their ballot papers as provided in *The Ontario Election Act*.

2. That I will not communicate to any person any information of any kind which may enable or assist any person to ascertain the candidate for whom any person has voted.

3. That I will in all respects maintain and aid in maintaining the absolute secrecy of the voting at this polling place.

So help me God.

Sworn (or affirmed) before
me at this
day of 19 .

A Commissioner, etc.
(or as the case may be).
See section 6.

8 Edw. VII. c. 3, Form 28.

SCHEDULE B.

FEES AND EXPENSES OF RETURNING OFFICERS.

(Referred to in Section 209 (1).)

1. Drawing Proclamation	\$ 1 00
2. Pay of Election Clerk attending nomination.....	4 00
3. Pay of Election Clerk attending adding up of votes.....	4 00
4. Two constables attending nomination (each).....	2 00
5. Holding election and if there is no contest making return—including appointment and swearing of Election Clerk	10 00
6. Appointing and swearing deputies (each).....	50
7. Payment to Clerk of the Peace or Clerk of the Muni- cipality for furnishing Polling Lists as provided by section 81 of <i>The Ontario Voters' Lists Act</i>	
8. If there is a contest (in addition to item 5) for final addition of votes and declaration of election and making up and transmitting the return to the Clerk of the Crown in Chancery (including duplicates to each candidate) and all other services connected therewith.....	20 00
9. Mileage (except in a city forming a separate electoral district or divided into electoral districts) for posting pro- clamation, appointing and swearing deputies and delivering polling lists, etc., to them and going to and returning from nomination to be allowed to both the Returning Officer and Election Clerk for every mile necessarily travelled from place to place to be taxed in the same manner as Sheriff's mileage on summoning jurors.....	10

10. Dividing a municipality or part thereof into polling subdivisions under subsection 3 of section 53—a reasonable allowance to be fixed by the Auditor of Criminal Justice Accounts.

11. Polling places as provided by subsection 4 of section 54.

DEPUTY RETURNING OFFICERS.

12. Holding the poll, including all services connected therewith and making returns.....	\$ 6 00
13. Pay of Poll Clerk, one day.....	3 00
14. Pay of one Constable, one day.....	2 00
15. Providing Voting Compartments (each).....	1 00

AUDITOR CRIMINAL JUSTICE ACCOUNTS.

16. For services under subsection 3 of section 209 a reasonable allowance to be fixed by the Lieutenant-Governor in Council.

8 Edw. VII. c. 3, Schedule B.

CHAPTER 9.

An Act to provide for the Prompt Punishment for Personation at Elections for the Legislative Assembly.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Punishment for Personation Act*. 9 Edw. VII. c. 3, s. 1. Short title.
2. In this Act “county” shall include “district.” 9 Edw. VII. c. 3, s. 2. Interpretation
“County.”
3. Where a person is charged at a place of registration under *The Manhood Suffrage Registration Act*, or at a polling place with having committed the offence of personation as defined by the said Act or by *The Ontario Election Act*, the registrar or deputy returning officer at such place may take the information on oath of the person making the charge, and it shall be the duty of the registrar or deputy returning officer to take the information when requested so to do by a candidate or his agent. 9 Edw. VII. c. 3, s. 3. Information before officer at registry or polling place.
Rev. Stat. cc. 7, 8.
4. Where the information is laid before a registrar and a warrant is issued by him under this Act, or, notwithstanding the provisions of section 201 of *The Ontario Election Act*, where the information is laid before a deputy returning officer, and a warrant for the arrest of the offender is issued by him under this Act, the punishment or penalty imposed by law may be imposed by or recovered before a police magistrate or two justices of the peace in a summary manner under *The Ontario Summary Convictions Act*, and every warrant issued by such officer shall be presumed to have been issued under this Act. 9 Edw. VII. c. 3, s. 4. Mode of recovering penalty.
Rev. Stat. c. 8.

Rev. Stat. c. 91.
5. Where the person against whom it is proposed to lay the information has not left the place of registration or the polling place, the registrar or deputy returning officer may, either of his own motion or at the request of any one proposing forthwith to lay any information against such person, detain him or direct his detention until an information can be laid and a warrant for his arrest issued. 9 Edw. VII. c. 3, s. 5. When offender may be detained.

When
warrant
may be
issued.

6. Where the information is laid, the registrar may on any day during which a sittings for registration is held, or the deputy returning officer may on the polling day, but not afterwards, issue his warrant for the arrest of the person charged, in order that he may be brought before the police magistrate or justices of the peace to answer the information and to be further dealt with according to law. 9 Edw. VII. c. 3, s. 6.

Authority of
constable,
etc., under
warrant.

7. The warrant shall be sufficient authority for any constable, peace officer or gaoler to detain such person until he is brought before the police magistrate or justices of the peace. 9 Edw. VII. c. 3, s. 7.

Where name
of person
charged is
unknown.

8. Where the correct name of the person charged is unknown to the informant, it shall be sufficient in the information and other proceedings to describe the person charged as a person whose name is unknown, but who is detained by the authority of the registrar or deputy returning officer under the provisions of this Act; or the person charged may be described in such other manner as may sufficiently identify him; but when the name of the person so charged has been ascertained, it shall be stated in any subsequent warrant or proceeding. 9 Edw. VII. c. 3, s. 8.

Authority of
certain officers.

Special
constables.

9. Every registrar's clerk and every poll clerk shall have the authority of a constable for the purpose of carrying out the provisions of this Act; and every registrar and deputy returning officer may appoint such special constables as he deems necessary for the like purpose; and such persons shall have full power to act without taking any oath. 9 Edw. VII. c. 3, s. 9.

Form of
information
and warrant.

10. Informations or warrants may be in accordance with the forms in the Schedule hereto, but it shall not be necessary that a warrant shall have a seal affixed thereto, and the omission of a seal, where a warrant purports to be sealed, shall not invalidate it. 9 Edw. VII. c. 3, s. 10.

Supply of
forms.

11. Every crown attorney shall keep in his office a sufficient supply of printed forms of such informations and warrants, and shall upon the request of the chairman of a board of manhood suffrage registrars furnish him with as many of such forms as are necessary for the use of the registrars, and shall upon the request of the returning officer furnish him with as many of such forms as are necessary for the use of the deputy returning officers; and every returning officer shall, before the polling day, furnish each deputy returning officer with at least ten of each of such forms. 9 Edw. VII. c. 3, s. 11.

Allowance to
Crown
Attorney for
supplying
forms.

12.—(1) For providing and furnishing the forms, the crown attorney shall be allowed \$4 for each election for which such forms are supplied, to be paid on the production

of the receipts of the officer or officers to whom they were furnished.

(2) The fees and the disbursements of the crown attorney in obtaining the forms shall form part of the expenses of criminal justice. 9 Edw. VII. c. 3, s. 12.

13. Every person guilty of any wilful misfeasance, or any wilful act or omission in contravention of this Act, shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act or omission, \$400. 9 Edw. VII. c. 3, s. 13. ^{Pecuniary penalty.}

SCHEDULE.

FORM 1.

(See Section 37 of the Manhood Suffrage Registration Act.)

*Information for Personation at a Place of Registration of Manhood
Suffrage Voters.*

County of _____, } The information of
 } of the _____ of _____, taken
of _____, } this _____ day of _____ 19 _____, before
To Wit: } the undersigned, a Registrar under *The*
the _____ of _____ } *Manhood Suffrage Registration Act*, for

The informant says that he believes that (1) on this day at the sittings held in the of at a place of registration in the said for the registration of voters under the said Act did commit the offence of personation contrary to the said Act for that the said (2) did apply to be registered in the name of another person, that is to say, in the name of C. D. (3).

A. B.,
Informant.

Taken and sworn (4) before me at the said place of registration
and on the day and year above mentioned. W. J.

NOTE:—(1) If the name of the person charged is unknown to the informant substitute "a person whose name is unknown to the informant, but who is now detained in the said place of registration under my order."

(2) Or "person, whose name is unknown."

(3) Or "having been once registered did apply to be again registered under the said Act."

(4) Or, if the informant is a person who may by law affirm in civil cases then for "sworn" substitute "solemnly affirmed".

FORM 2.

(See Section 174 of The Ontario Election Act.)

Information for Personation at a Polling Place.

County of _____, } The information of _____ of
 of _____, } the _____ of _____, taken this
 day of _____ 19 _____, before the
 To Wit: } undersigned, a Deputy Returning Officer
 at a polling place in the _____ of _____ for an election then being
 held of a Member of the Legislative Assembly for the Electoral Dis-
 trict of _____

The informant says that he believes that _____ (1)
 on this day at the said polling place did commit the offence of
 personation contrary to *The Ontario Election Act*, for that the said
 _____ (2) did apply for a ballot paper in the
 name of another person, that is to say, in the name of C. D. (3).

A. B.,
 Informant.

Taken and sworn (4) before me at the said polling place and on
 the day and year above mentioned.

W. J.

NOTE.—(1) *If the name of the person charged is unknown to the informant substitute "a person whose name is unknown to the informant but who is now detained in the said polling place under my order."*

(2) *Or "person whose name is unknown."*

(3) *Or, "having voted at the same election, did apply for a ballot paper in his own name," or "did vote more than once at the same election."*

(4) *Or, if the informant is a person who may by law affirm in civil cases then for "sworn" substitute "solemnly affirmed."*

9 Edw. VII. c. 3, Form 2.

FORM 3.

Warrant for Personation at Place of Registration.

County of _____, } To all or any of the constables and
 of _____, } other peace officers in the County of
 To Wit: } and of _____
 day _____ taken before _____ Whereas information on oath has this
 of _____ the undersigned, a Registrar for the
 Act, for that _____ under *The Manhood Suffrage Registration*
 in the _____ of _____ (1) on this day at a sittings held
 said _____ at a place of registration in the
 for the registration of voters under the said Act, did
 commit the offence of personation contrary to the said Act, for
 that the said _____ (2) did apply to be registered in the
 name of another person, that is to say, in the name of _____
 (or as the case may be, describing the offence as in the informa-
 tion);

These are therefore to command you in His Majesty's name
 forthwith to apprehend the said _____ and to bring him
 before the Police Magistrate of the said _____ or before two
 Justices of the Peace for the said county to answer to the said
 information and to be further dealt with according to law.

Given under my hand this _____ day of _____
 19 _____

W. J.

NOTE.—(1) *If the name of the person charged is unknown substitute "a person whose name is unknown to the informant, but who is now detained in the said place of registration by my order and is being delivered into the custody of G.D., a constable of the said _____"*

(2) *Or, "person, whose name is unknown."*

9 Edw. VII. c. 3, Form 3.

FORM 4.

Warrant for Personation at Polling Place.

County of _____, } To all or any of the constables and
of _____, } other peace officers in the _____ of
To Wit: } and _____ of
Whereas information on oath has this
day been taken before the undersigned, a deputy returning officer
at a polling place in the _____ of _____ for an
election then being held of a Member of the Legislative Assembly
for the electoral district of _____ for that
(1) on this day at the said polling place did
commit the offence of personation, contrary to *The Ontario
Election Act*, for that the said _____ (2) did apply
for a ballot paper in the name of another person, that is to say,
in the name of _____ (or as the case may be, describ-
ing the offence as in the information);
These are therefore to command you in His Majesty's name
forthwith to apprehend the said _____ and to bring him
before the Police Magistrate of the said _____ or before two
Justices of the Peace for the said county, to answer the said
information and to be further dealt with according to law.
Given under my hand and seal this _____ day of _____
19 _____. W. J.

NOTE.—(1) *If the name of the person charged is unknown substitute "a person whose name is unknown to the informant, but who is now detained in the said polling place, and is being delivered into the custody of G. D., a constable of the said _____"*

(2) *Or, "person whose name is unknown."*

9 Edw. VII. c. 3, Form 4.

CHAPTER 10.

An Act respecting Controverted Elections of Members of the Legislative Assembly.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title. 1. This Act may be cited as *The Ontario Controverted Elections Act*. 8 Edw. VII. c. 4, s. 1.
- Interpretation. 2. In this Act—
- “Candidate.” (a) “Candidate at an election” and “candidate” shall mean and include a person elected to serve in the Assembly, and a person who is nominated as a candidate at an election, or is declared by himself or by others to be a candidate, on or after the day of the issue of the writ for an election, or after the dissolution or vacancy in consequence of which the writ has been issued;
- “Corrupt practices” and “corrupt practice.” (b) “Corrupt practice” shall have the meaning assigned to it by *The Ontario Election Act*;
- “County.” (c) “County” shall include united counties and a district;
- “County Court.” (d) “County Court” shall include a district court;
- “The Court.” (e) “Court” shall mean Divisional Court;
- “Election.” (f) “Election” shall mean an election of a Member to serve in the Assembly;
- “Election Court.” (g) “Election Court” shall mean a Court constituted under this Act for the trial of a petition or a Summary Trial Court constituted under this Act for the trial of persons charged with corrupt practices or illegal acts;
- “Election List.” (h) “Election List” shall mean the list of petitions referred to in section 33;
- “Member.” (i) “Member” shall mean a Member of the Assembly;
- “Petition.” (j) “Petition” shall mean a petition presented under this Act;

- (k) "Prescribed" shall mean prescribed by this Act or "Prescribed." by Rules of Court;
- (l) "Public moneys" shall include the moneys of "Public moneys," Ontario or of a municipality; meaning of.
- (m) "The Registrar" shall mean the Registrar of the "Registrar." Appellate Division;
- (n) "Rules of Court" shall mean Rules made as here- "Rules of Court." inafter provided;
- (o) "The Speaker" shall mean the speaker of the As- "The Speaker." sembly, or, when the office is vacant, the Clerk of the Assembly, or any other officer for the time being performing the duties of the Clerk.

8 Edw. VII. c. 4, s. 2.

3. The Court shall, subject to the provisions of this Act, Jurisdiction. have the same powers, jurisdiction and authority with reference to a petition and the proceedings thereon as the Supreme Court would have if the petition were an ordinary action within the jurisdiction of that Court. 8 Edw. VII. c. 4, s. 3.

4.—(1) Where not otherwise herein provided and subject Practice and procedure. to Rules of Court the practice and procedure of the Supreme Court shall apply to a petition and to the proceedings thereon with respect to—

- (a) service of the petition and of all other documents,
- (b) payment into and out of court,
- (c) examination for discovery,
- (d) production and inspection of documents,
- (e) costs and the taxation and recovery thereof,
- (f) all other matters of practice or procedure.

(2) Nothing in this section shall extend or shall confer Saving. the right to extend the time for the presentation of a petition. 8 Edw. VII. c. 4, s. 4.

RULES OF COURT.

5.—(1) The Supreme Court, or a majority of the Judges thereof, may make General Rules not inconsistent with this Act for the effectual execution thereof, and the regulation of the practice and procedure and as to costs. Power to make rules of court.

(2) The Rules of Court shall be laid before the Assembly within three weeks after they are made, if the Assembly is then sitting, and if the Assembly is not then sitting, within three weeks after the beginning of the next Session. 8 Edw. VII. c. 4, s. 5. Rules to be laid before the Assembly.

Present rules
and practice
in cases not
provided for.

6. The Rules of Court now in force shall remain in force until revoked or altered by Rules of Court made in pursuance of this Act; and, so far as the Rules of Court from time to time in force do not extend, the principles, practice and rules on which election petitions touching the election of members to the House of Commons of Great Britain and Ireland were on the fifteenth day of February, 1871, dealt with, where not inconsistent with this Act, shall be observed. 8 Edw. VII. c. 4, s. 6.

PRESENTATION OF PETITION.

Subject matter
of petition.

7. A petition may be presented to the Court complaining of an undue return or undue election of a member, or of no return, or of matters contained in a special return, or of a corrupt practice by a candidate not returned by which he is alleged to have become disqualified to sit in the Assembly. 8 Edw. VII. c. 4, s. 7.

By whom
petition may
be presented.

8. A petition may be presented by:—

- (a) a person who was a candidate at the election; or
- (b) three persons who voted or who had a right to vote at the election and who are severally rated on the last revised assessment roll in respect of real property in the electoral district for at least \$1,000. 8 Edw. VII. c. 4, s. 8.

Who may be
made
respondents.

9. Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time; but the petition shall be deemed to be a separate petition against each respondent. 8 Edw. VII. c. 4, s. 9.

Petition com-
plaining of a
Returning
Officer.

10. Where a petition complains of the conduct of a returning officer, he shall, for all the purposes of this Act, except the admission of a respondent in his place, be deemed to be a respondent. 8 Edw. VII. c. 4, s. 10.

Petition com-
plaining of no
return.

11. Where a petition complains of no return the Court may make such order thereon as it thinks expedient for compelling a return to be made, or may allow the petition to be tried by an Election Court in the manner herein provided with respect to other petitions. 8 Edw. VII. c. 4, s. 11.

Petition, when
to be presented.

12. The petition shall be presented within forty-five days after the day on which the polling was held for the election named in the petition, unless it questions the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other act by the member or on his account, or with his privity, since the time of the return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within the said period of forty-five days or within twenty-eight days after the date of such payment or act. 8 Edw. VII. c. 4, s. 12.

13. A petition shall be in such form, and state such matters as may be prescribed, and shall be signed by the petitioner, or all the petitioners, if there are more than one. Form of petition, and by whom to be signed.
8 Edw. VII. c. 4, s. 13.

14. If a petition is presented against the return of a member, the respondent or any other persons authorized by law to present a petition, may, within fifteen days after the service of the petition against the return, present a petition complaining of any corrupt practice by any candidate at the same election who was not returned, whether the seat is or is not claimed by him, or on his behalf, and the trial of such petition shall take place at the same time as the trial of the petition against such member or respondent, or at such other time as may be appointed. Cross petition on account of corrupt acts. against candidate not returned.
8 Edw. VII. c. 4, s. 14.

15.—(1) Presentation of a petition in a case arising in the County of York or the City of Toronto shall be made by delivering it to the Registrar, and in other cases by delivering it to the local registrar of the Supreme Court for the county or district in which the electoral district or any part thereof is situate, or otherwise dealing with the same in the manner prescribed. Presentation of petition.

(2) On receipt of a petition by a local registrar he shall send notice thereof by registered post to the Registrar. Notice to Registrar.

(3) The Registrar shall send a notice by registered post to the Clerk of the Crown in Chancery of the presentation of every petition. Notice to Clerk of the Crown in Chancery.
8 Edw. VII. c. 4, s. 15.

16. With every petition shall be filed an affidavit by each of the petitioners, referring or annexed to the petition, stating that the deponent presents the petition in good faith, and has reason to believe and believes the statements contained in it to be true in substance and in fact; all particulars afterwards furnished by either party shall be verified by the affidavit of a petitioner. Verification.
8 Edw. VII. c. 4, s. 16.

17.—(1) On the presentation of a petition against the return of a member, the officer with whom the same is filed shall send a copy thereof by mail to the returning officer of the electoral district to which the petition relates, who shall forthwith publish a notice thereof once in a newspaper published in the district, or, if there be no newspaper published in the district, then in a newspaper published in an adjoining district. Publication of notice of petition.

(2) The notice may be in the form following:— Form of notice

“Notice is hereby given that has
presented a petition to the Supreme Court of Ontario, under *The Ontario Controverted Elections Act*, against the return of Esquire, as a member of the Legislative Assembly for the Electoral District of [and (where the seat is claimed) claim-

ing the seat for
Dated at

the

or as the case may be.]
day of 19 .
Returning Officer.

8 Edw. VII. c. 4, s. 17.

Disclaimer not
to affect right
to petition
claiming seat.
Rev. Stat.
c. 11.

18.—(1) A disclaimer by the member elect under the provisions of *The Legislative Assembly Act* shall not affect the right of any person entitled to contest the election to present a petition claiming the seat for himself or for some other person, nor the liability of the person disclaiming in respect of corrupt practices against whom a petition may be presented in the same manner as if he had not disclaimed.

When seat
claimed.

(2) In case of a petition claiming the seat for the petitioner or some other person the Election Court shall determine whether any candidate other than the member who has disclaimed was duly elected and the candidate declared by the Election Court duly elected shall be entitled to the seat. 8 Edw. VII. c. 4, s. 18.

Notice of dis-
claimer.

Rev. Stat.
c. 11.

19. The officer receiving a copy of the disclaimer under section 20 of *The Legislative Assembly Act* shall give notice of such disclaimer to any person who has filed, or who may thereafter present to be filed a petition against the member disclaiming. 8 Edw. VII. c. 4, s. 19.

Permitting
petition to be
filed where
corruption
charged.

20. Notwithstanding such disclaimer a Judge of the Court, upon the application of any voter in the electoral district within ten days after the Registrar shall have received notice of the disclaimer, upon its being made to appear that corruption has extensively prevailed at the election, may permit a petition to be filed in the same manner as though no such disclaimer had been made, or may, upon the grounds aforesaid, permit proceedings upon any petition which has been filed to proceed upon such terms as he may think fit. 8 Edw. VII. c. 4, s. 20.

SECURITY FOR COSTS.

Security for
costs.

21. At the time of the presentation of every petition, or within four days afterwards, security shall be given on behalf of the petitioner for the payment

- (a) to the returning officer and the sheriff of the costs and charges incurred in the publication of notices in the electoral district in respect of the petition or proceedings thereon, which shall form a first charge upon the security, and
- (b) of all costs, charges and expenses that may become payable by the petitioner to
 - (i) every person summoned as a witness on his behalf,

- (ii) the member or candidate against whom the petition is presented, and
- (iii) the returning officer if his conduct is complained of. 8 Edw. VII. c. 4, s. 21.

22. The security shall be by a deposit of \$1,000, in one of the banks in which public money of Ontario is then being deposited, and the deposit shall be made to the credit of the petition, with the privity of the Accountant of the Supreme Court. 8 Edw. VII. c. 4, s. 22. How made.

SERVICE OF PETITION.

23.—(1) A copy of the petition, together with notice of the presentation thereof, shall be served upon the respondent within ten days after the day on which security is given or within such further period as the Court or a Judge thereof, under special circumstances of difficulty in effecting service and on application made not later than three days after the expiration of such ten days, may allow. Service of petition.

(2) The service shall be made as nearly as may be in the manner in which a writ of summons is served or in such other manner as may be prescribed. Manner.

(3) By leave of the Court or a Judge the service may be made out of Ontario. 8 Edw. VII. c. 4, s. 23. Out of Ontario.

PRELIMINARY EXAMINATION OF PARTIES, AND PRODUCTION OF DOCUMENTS.

24. Every party to a petition may, at any time after the petition is at issue, be examined, in the manner hereinafter directed, by a party adverse in interest, touching any matter raised by the petition; and any party so examined may be further examined on his own behalf, in relation to any matter respecting which he has been examined in chief; and when one of several petitioners or respondents has been so examined, any other petitioner or respondent, united in interest, may be examined on his own behalf, or on behalf of those united with him in interest, to the same extent as the party examined; but the explanatory examination shall be proceeded with immediately after the examination in chief, and not at any future period, except by leave of the Court or a Judge. 8 Edw. VII. c. 4, s. 24. When and how parties to petitions may be examined.

25. Where a petition has been filed against a member elect who is entitled to take his seat he shall not without his consent be required to attend on any preliminary examination during a session of the Assembly. 8 Edw. VII. c. 4, s. 25. Member not required to attend on preliminary examination during session.

26. Where a party to a petition deems that a preliminary examination is being carried on for an unreasonable length Stay of examination may be ordered.

of time he may apply to a Judge of the Court on giving two clear days' notice to the opposite party, for an order that no further examination shall be had or that the examination shall be closed by a day to be named, and the Judge may make an order accordingly or may make such other order as appears just and reasonable. 8 Edw. VII. c. 4, s. 26.

Examination
of candidate
claiming seat.

27. A candidate for whom the seat is claimed although not a party to the petition may be orally examined as if he were a petitioner, and for the purpose of production of documents shall be deemed to be a petitioner. 8 Edw. VII. c. 4, s. 27.

How examina-
tion of parties
shall be had.

28.—(1) A party to be examined orally, shall be examined before a judge of the county court, the Registrar or a local master or special examiner of the Supreme Court, or by consent of the parties before a barrister-at-law specially named in the order for examination.

Costs of pre-
liminary ex-
aminations.

(2) The costs of and incidental to every preliminary examination shall be borne by the party procuring the examination, and shall not in any event be chargeable against the other party, or against the deposit in court. 8 Edw. VII. c. 4, s. 28.

Depositions to
be filed.

29. When the examination is concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the office where the petition is filed; and any party to the petition shall be entitled to a copy of the depositions, or any part thereof, upon payment for the same at such rate as may be prescribed. 8 Edw. VII. c. 4, s. 29.

Production of
bills and
vouchers for
purpose of pre-
liminary ex-
amination.

30.—(1) If a preliminary examination is had the returning officer to whom the bills and vouchers relating to the election have been delivered, as provided by *The Ontario Election Act* may be subpoenaed to produce such bills and vouchers for the purposes of the examination.

Custody.

(2) Immediately upon the close of the examination the bills and vouchers shall be returned to the returning officer and verified copies thereof may be made and filed as exhibits in lieu of the originals. 8 Edw. VII. c. 4, s. 30.

Attendance of
prisoners as
witnesses.

31. Where the party to be examined is a prisoner the sheriff, gaoler or other officer having him in custody, shall take him before the examiner if so ordered by the Court or a Judge. 8 Edw. VII. c. 4, s. 31.

Depositions
may be used
on trial.

32. Every party to the petition shall be entitled to use, upon the trial, depositions of the opposite party; but where such party uses any portion of a deposition the Election Court may look at the whole deposition and allow such other

part of it as is explanatory of the part used to be read in connection therewith. 8 Edw. VII. c. 4, s. 32.

TRIAL OF PETITIONS.

33.—(1) The Registrar shall, as soon as possible, make out a list of all petitions which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of the list, open to the inspection of any person making application, and the petitions, as far as conveniently may be, shall be tried in the order in which they stand on the list.

List of petitions at issue.

Order in which petitions shall be tried.

(2) Where more petitions than one relating to the same election or return are presented, they shall in the election list be bracketed together and shall be dealt with as far as practicable as one petition; but the petitions shall stand on the election list in the place where the last of them would have stood if it had been the only petition presented, unless the Court otherwise directs. 8 Edw. VII. c. 4, s. 33.

Several petitions relating to same election, how placed on election list.

34. Every petition shall be tried by two judges of the Supreme Court without a jury. 8 Edw. VII. c. 4, s. 34.

Trial to be by two judges.

35.—(1) All such arrangements as may be necessary for the holding of the election courts and the assignment from time to time of the judges before whom the election trials and trials of persons charged with corrupt practices are to take place shall be made by the judges of the Supreme Court or a majority of them.

Assignment of judges for trial of petitions.

(2) Where occasion for so doing arises the Judges of the Supreme Court, or a majority of them, may at any time substitute for any Judge assigned to hold an Election Court any other Judge of the Supreme Court.

Substitution.

(3) The Judges of the Supreme Court, or a majority of them, may from time to time delegate to such of their number, not being less than four as they may see fit, the duties mentioned in subsection 1 or any of them. 8 Edw. VII. c. 4, s. 35.

Delegation of duties.

36.—(1) The Lieutenant-Governor in Council may appoint a Registrar to be called the Registrar of the Election Court, who shall attend the trials of petitions and perform such duties as may be prescribed by Order in Council or Rule of Court.

Registrar of Election Court, appointment of.

(2) Where the Registrar is unable to attend the Judges assigned to hold the Court may appoint a Registrar thereof, and he shall be entitled to such fees as may be determined by the Lieutenant-Governor in Council.

Absence of Registrar.

Salary.

(3) The salary of the Registrar shall be determined by Order in Council and shall be in lieu of all fees. 8 Edw. VII. c. 4, s. 36.

Place of trial.

37.—(1) The trial of a petition shall take place in the electoral district, the election or return for which is in question, unless it appears to the Election Court that it is desirable that the petition should be tried elsewhere, in which case the Court may, with the consent of the parties, appoint such other place as appears most convenient.

Adjournment.

(2) The Election Court may adjourn the trial from time to time, and from any one place to any other place within the electoral district, as may seem expedient.

Adjournment to Toronto.

(3) Nothing in this section contained shall prevent the Election Court from directing that the trial be adjourned to be continued or closed in Toronto. 8 Edw. VII. c. 4, s. 37.

Notice of trial.

38. Notice of the time and place at which the petition will be tried shall be given in the prescribed manner, not less than fourteen days before the day on which the trial is to take place. 8 Edw. VII. c. 4, s. 38.

Reception and attendance on the Judge.

39. The Judges shall be received and attended at the place where they are to try a petition, in the same manner, so far as circumstances will admit, as a Judge is received and attended at a sittings of the High Court Division in a county town for the trial of actions. 8 Edw. VII. c. 4, s. 39.

Powers of the Election Court.

40. Subject to the provisions of this Act, the Judges constituting an Election Court shall have the same powers, jurisdiction and authority as Judges of the Supreme Court, and the Election Court shall be a Court of Record. 8 Edw. VII. c. 4, s. 40.

Certain circumstances not to stop trial.

41. The trial or an appeal from a judgment of the Election Court may be proceeded with, notwithstanding the acceptance by the respondent of an office of profit under the Crown, or his resignation of the seat, or the prorogation or dissolution of the Assembly. 8 Edw. VII. c. 4, s. 41.

Application to change petitioner when delay in fixing day for trial.

42. Where three months have elapsed after the presentation of a petition, without the day for the trial having been fixed, any voter may, on application to the Court or a Judge, be substituted for the petitioner or petitioners on such terms as may be just. 8 Edw. VII. c. 4, s. 42.

Time for commencement of trial.

43.—(1) Subject to the provisions of section 44, the trial shall be commenced within six months from the time when the petition was presented, and shall be continued *de die in diem* until its conclusion, unless it appears to the Election

Court that the requirements of justice render it necessary that the trial should be adjourned.

(2) The Election Court may upon application of either party, after the day of trial has been fixed, and before it has been commenced, postpone the trial on such terms as may be just. Postponement.

(3) A Divisional Court or a Judge thereof may upon application made before the expiration of the said period of six months, extend the time for fixing the day of trial to a day before or after the expiration of the said six months. 8 Edw. VII. c. 4, s. 43.

44. If the member-elect is entitled to take his seat, the trial shall not, without his consent, be held during, or within, fifteen days after the close of a Session of the Assembly; and in the computation of any time or delay allowed for any step or proceeding in respect of the trial, or for the commencement of the trial the time occupied by the Session shall not be reckoned. 8 Edw. VII. c. 4, s. 44. When trial shall not be held, during a session or fifteen days thereafter.

Evidence.

45. Unless the Election Court otherwise directs evidence in support of a charge of a corrupt practice may be received, before proof has been given of the agency of the person alleged to have committed the corrupt practice. 8 Edw. VII. c. 4, s. 45. When evidence of corrupt practice may be received.

46. On the trial of a petition complaining of an undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue, in the same manner as if the respondent had presented a petition under the provisions of section 14. 8 Edw. VII. c. 4, s. 46. Cross evidence of undue return.

Witnesses.

47. Witnesses shall be subpoenaed and sworn in the same manner, as nearly as circumstances will admit, as on the trial of an action. 8 Edw. VII. c. 4, s. 47. Witness, how subpoenaed and sworn.

48.—(1) The Election Court may, by order, compel the attendance as a witness at the trial of any person who appears to have been concerned in the election to which the petition relates, and any person refusing to obey such order shall be guilty of contempt of court. Power of Election Court to order attendance.

(2) The Election Court may examine any witness so compelled to attend or any person in Court, although he is not called and examined by a party to the petition. Examination by Court.

Cross-examination.

(3) After the examination of the witness he may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

Prisoners as witnesses.

(4) When a witness is a prisoner the gaoler or other officer having him in custody shall take him before the Election Court if so ordered by that Court or by a Judge of a Divisional Court. 8 Edw. VII. c. 4, s. 48.

Persons not excused from answering on ground of privilege.

49.—(1) A person who is called before an Election Court shall not be excused from answering any question relating to an offence at or connected with the election, on the ground that the answer may criminate or tend to criminate him, or to establish his liability to a civil proceeding at the instance of the Crown or of any person, or on the ground of privilege, but

Certificate of indemnity.

(a) a witness who answers truly all questions which he is required by the Election Court to answer shall be entitled to receive a certificate of indemnity under the hands of the members of such court, stating that the witness has so answered, and

Imp. Act, 46 & 47 V. c. 51, s. 59.

(b) any such answer to a question put by or before an Election Court shall not be admissible in evidence against him in any proceeding under any Act of this Legislature.

Stay of proceeding against witness who has received certificate.

(2) Where a witness has received a certificate, and a legal proceeding is at any time instituted against him for an offence under or a contravention of *The Ontario Election Act*, committed by him before the date of the certificate at or in relation to the election, the court having cognizance of the proceeding shall on the production of the certificate stay the proceeding, and may award to such person such costs as he may have been put to in the proceeding, but a witness who upon his own evidence is found by the Election Court to have been guilty of a corrupt practice, and who is reported therefor, shall be thereby subject to the penalties and disabilities mentioned in section 182 of *The Ontario Election Act*, unless such finding and report are reversed or set aside by the Court. 8 Edw. VII. c. 4, s. 49.

Proviso.

Rev. Stat. c. 8.

Expenses of witnesses.

50. A person appearing to give evidence before an Election Court shall be entitled to the like fees and expenses as are allowed to witnesses on the trial of civil actions, and such fees and expenses, if the witness was called and examined by the Election Court shall be deemed to be part of the expenses of providing a Court, and in other cases shall be costs of the party calling the witness. 8 Edw. VII. c. 4, s. 50.

REPORTS AND CERTIFICATES.

51. The Election Court shall determine whether the member whose return or election is complained of, or any and what other person was duly returned or elected, or whether the election was void, and shall also determine the matters in question on a petition, if any, presented under the provisions of section 14, and, except in the case of an appeal as hereinafter provided, shall certify their determination to the Speaker and, upon the certificate being given, such determination shall be final. 8 Edw. VII. c. 4, s. 51.

Decision of
Election Court

Finality.

52. Where a charge is made in a petition of a corrupt practice having been committed, the Election Court shall, with the certificate, and at the same time, report as follows:—

Report of
Judges where
charge is made
of corrupt
practices.

- (a) whether any corrupt practice has been proved to have been committed by or with the actual knowledge and consent of any and of which candidate, and the nature of such corrupt practice;
- (b) the name of any person who has been proved to have been guilty of a corrupt practice;
- (c) the name of any person who upon his own evidence has been found guilty of a corrupt practice;
- (d) whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election;
- (e) whether they are of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt practices have extensively prevailed is desirable. 8 Edw. VII. c. 4, s. 52.

53. The Election Court may also report specially as to any matter arising in the course of the trial, an account of which ought to be submitted to the Assembly. 8 Edw. VII. c. 4, s. 53.

Special report.

54.—(1) Where an appeal is had from their judgment on the trial of a petition the Election Court shall make the certificates and reports to the Divisional Court, and the same shall form part of the record upon the appeal.

Certificate
for Appellate
Division.

(2) The Election Court shall not certify their determination until after the security for costs of appeal has been deposited, or until the time limited for depositing the security has expired. 8 Edw. VII. c. 4, s. 54.

Certificate not
to be issued
during time
for appealing.

55.—(1) Every certificate and every report shall be under the hands of both of the Judges constituting the Election Court.

Concurrence
of judges.

Where
difference of
opinion.

(2) If the Judges differ as to whether a member whose return or election is complained of was duly returned or elected, they shall certify that difference, and subject to appeal he shall be deemed to be duly returned or elected.

Agreement as
to undue
return or
election.

(3) If the Judges determine that a member was not duly returned or elected, but differ as to other matters arising upon the trial, they shall certify that difference, and, subject to appeal, the election shall be void.

Other
matters.

(4) If the Judges differ as to any matter which might be the subject of a report, they shall certify that difference, and make no report on that matter. 8 Edw. VII. c. 4, s. 55.

Speaker to
communicate
report to the
Assembly.

56. The Speaker shall as soon as practicable after he receives a certificate or a certificate and report, communicate the same to the Assembly, and the same shall forthwith thereafter be entered on the Journals, and the Assembly may give the necessary directions for confirming or altering the return, or for issuing a writ for a new election, or for carrying the determination into execution as the circumstances may require. 8 Edw. VII. c. 4, s. 56.

Proceedings
thereon.

If election set
aside and
appeal entered.

57.—(1) If the Election Court determines that a member was not duly returned or elected notwithstanding that an appeal from the decision is pending, he shall not be entitled to sit or vote in the Assembly until the appeal is disposed of, and the certificate of the Court received by the Speaker, but where the Election Court determines that some other person was elected or is entitled to the seat, such person shall, notwithstanding that an appeal is pending, be entitled to take his seat in the Assembly and to sit and vote until the appeal is disposed of and the certificate of the Court received by the Speaker.

Notice to
Speaker.

(2) In the cases to which subsection 1 applies where an appeal is entered the Registrar shall forthwith notify the Speaker of the determination of the Election Court, and that an appeal therefrom is pending. 8 Edw. VII. c. 4, s. 57.

Time for issue
of writ for new
election.

58. A writ for a new election shall not be issued until after the expiration of eight days from the determination of the Election Court, that the return or election is void and, if an appeal is in the meantime brought, the writ shall not issue, pending the appeal. 8 Edw. VII. c. 4, s. 58.

SPECIAL CASE.

Special case—
hearing of.

59.—(1) Where it appears to the Court or to the Election Court that the case raised by the petition can be conveniently stated as a special case either Court, upon the application of a party or upon the consent of all parties, may direct the same to be stated accordingly; and such spe-

cial case shall be heard before a Divisional Court whose decision shall be final, and the Registrar shall certify to the Speaker the judgment upon such special case and the petition.

(2) If it appears to the Election Court before or during the trial of a petition that there is a question of law which it would be convenient to have decided by the Court before the trial of the petition is concluded the Election Court may make an order accordingly, and may direct the mode in which the question shall be raised, and may in the meantime, if it appears necessary, adjourn the trial of the petition until the question has been decided, and shall thereafter deal with the petition upon the trial in accordance with the decision. 8 Edw. VII. c. 4, s. 59.

APPEALS.

60.—(1) Subject to the provisions of section 184 of *The Ontario Election Act* where the Judges constituting the Election Court disagree, they shall certify the disagreement as provided by section 55, and either party may thereupon bring the matter before the Court, and the Court shall, in disposing thereof, have the same jurisdiction in all respects as on an appeal from a decision of the Election Court and may determine all questions of law and fact which the Election Court might or should have determined, and the Registrar shall certify the judgment of the Court to the Speaker.

Disagreement
between the
trial Judges.

Application to
Court.

(2) Instead of determining all such questions the Court may refer the case back to the Election Court, with such declarations and directions as the Court may think fit; and the Election Court shall thereupon dispose of the case in accordance with such declarations and directions, and shall certify as the case may require. 8 Edw. VII. c. 4, s. 60.

Reference
back.

61.—(1) Subject to the provisions of section 70 a party to a petition who is dissatisfied with the judgment of the Election Court may appeal therefrom to a Divisional Court.

Appeal:

(2) The party appealing shall within eight days from the day on which the judgment was given deposit with the Registrar \$100 as security for costs.

Security for
costs;

(3) The Registrar shall thereupon set the appeal down to be heard on a day to be appointed by the Court, or a Judge thereof.

Setting down
for hearing;

(4) The appeal shall be given precedence over all ordinary business, but the Court may for sufficient cause postpone the hearing.

Precedence.

Notice of setting down ;

(5) The party appealing shall within three days after the security for costs has been given, or within such further time as the Court or a Judge may allow, give to the other parties affected by the appeal, notice in writing that the appeal has been set down to be heard and by the same notice the party appealing may limit the appeal to any specific question. 8 Edw. VII. c. 4, s. 61.

Hearing ;

Judgment.

62. The appeal shall thereupon be heard and determined by the Court, and such judgment shall be pronounced, as in the opinion of the Court should have been given by the Election Court. 8 Edw. VII. c. 4, s. 62.

Court to review decision upon facts as well as law.

63. The Court shall review the judgment upon questions of fact as well as of law, and shall draw such inference from the facts or evidence as the Election Court should have drawn. 8 Edw. VII. c. 4, s. 63.

Powers of Court as to amendments and evidence.

64. The Court shall have all the powers and duties as to amendment and otherwise of the Election Court, and may require any witness to be re-examined, and may receive further evidence, either by oral examination in Court, or by affidavit or by deposition taken before any Judge or other person whom the Court may name. 8 Edw. VII. c. 4, s. 64.

Judges may report upon demeanour of witnesses.

65. Where the judgment of the Election Court depends in whole or in part upon the credit given to particular witnesses, and the judgment is appealed against, the Election Court may make a written report as to the demeanour of the witnesses and their mode of giving their evidence, and of the reasons for giving credit to the particular witnesses. 8 Edw. VII. c. 4, s. 65.

Return of deposit.

66. The Court may make such order as to the disposition of the deposit as may seem just. 8 Edw. VII. c. 4, s. 66.

Registrar to certify judgment to the Speaker.

67. The Registrar shall certify to the Speaker the judgment of the Court in the same manner as the Election Court but for the appeal should have done; and shall certify as to the matters and things as to which the Election Court would but for such appeal have been required to report. 8 Edw. VII. c. 4, s. 67.

New trial.

68. Instead of so certifying, the Court, upon such terms as to costs and otherwise as may seem just, may grant a new trial for the purpose of taking evidence, or additional evidence, and may remit the case to the Election Court, or to some other Election Court; and, subject to any directions of the Court, the case shall be thereafter proceeded with as if there had been no appeal. 8 Edw. VII. c. 4, s. 68.

69. The judgment of the Court on any matter or question under this Act or *The Ontario Election Act* shall be final, and shall not be subject to appeal. 8 Edw. VII. c. 4, s. 69.

Decisions of Courts of Appeal to be final.

70. There shall be no appeal from a decision of the Election Court that a candidate or other person has not been guilty of corrupt practices, or from a finding in favour of a candidate of any of the matters of defence mentioned in sections 180 or 182 of *The Ontario Election Act*. 8 Edw. VII. c. 4, s. 70.

No appeal in certain cases.

Rev. Stat. c. 8.

WITHDRAWAL AND ABATEMENT OF ELECTION PETITIONS.

71.—(1) A petition shall not be withdrawn without the leave of the Court or a Judge upon special application, to be made in and at the prescribed manner, time and place.

Withdrawal of petitions.

(2) The application shall not be made until the prescribed notice thereof has been given in the Electoral District.

Notice of withdrawal.

(3) Where there are more petitioners than one, the application to withdraw a petition shall not be made, except with the consent of all the petitioners.

All petitioners must join in withdrawal.

(4) On the hearing of the application, any person who might have been a petitioner, may apply to be substituted as the petitioner.

Substitution of new petitioner.

(5) The Court or Judge may substitute the applicant as the sole petitioner, and, if the proposed withdrawal appears to be induced by any corrupt bargain or consideration, may direct that the security given shall remain as security for any costs that the substituted petitioner may be ordered to pay, and that to the extent of the security the original petitioner or petitioners shall be liable to pay such costs.

Order as to security where withdrawal is induced by corrupt bargain.

(6) If the Court or Judge makes no order with respect to the security given, security to the same amount as would be required in the case of a petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with the petition, and within four days after the order of substitution.

Security to be given by substituted petitioner.

(7) Subject as aforesaid, a substituted petitioner shall stand in the same position as nearly as may be, and be subject to the same liabilities as the original petitioner.

Liabilities of substituted petitioner.

(8) If a petition is withdrawn, the petitioner shall pay the costs of the respondent, unless the Court or a Judge otherwise orders. 8 Edw. VII. c. 4, s. 71.

Costs.

72. If it appears that the withdrawal of the petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, the Court or

Court to report whether withdrawal was the result of a corrupt arrangement, etc.

Judge shall report to the Speaker the circumstances attending the withdrawal. 8 Edw. VII. c. 4, s. 72.

Abatement of petition by death.

73.—(1) A petition shall abate on the death of a sole petitioner, or of the survivor of several petitioners.

Costs.

(2) The abatement of a petition shall not affect any liability for costs previously incurred.

Notice of abatement to be given.

(3) On the abatement of a petition the prescribed notice of the abatement shall be given in the Electoral District; and any person who might have been a petitioner may apply to the Court or a Judge thereof in and at the prescribed manner, time and place, to be substituted as the sole petitioner.

Substitution of new petitioner on abatement.

(4) The Court or Judge may substitute the applicant as the petitioner upon his giving security to the same amount as is required in the case of a petition. 8 Edw. VII. c. 4, s. 73.

Substitution of new petitioner where petitioner not qualified.

74. Where a petitioner is not qualified to be a petitioner, the petition shall not, on that account, be dismissed, if within such time as the Court or a Judge allows for that purpose another petitioner is substituted, and the substitution shall be made on such terms and conditions as to the Court or Judge may seem meet. 8 Edw. VII. c. 4, s. 74.

Notice required if respondent dies or seat becomes vacant.

75.—(1) If, before or during the trial of a petition,—

(a) the respondent dies; or

(b) the Assembly resolves that the seat is vacant; or

(c) the respondent gives notice to the Court or to the Election Court in and at the prescribed manner and time, that he does not intend to oppose, or further to oppose the petition,

notice of such event shall be given in the prescribed manner in the Electoral District.

Application to be admitted as a respondent.

(2) Within the prescribed time after the notice is given, any person who might have been a petitioner, may apply to the Court or a Judge to be admitted as a respondent to oppose the petition, or so much thereof as may remain undisposed of, and may be admitted accordingly, either with the respondent, if there be a respondent, or in place of the respondent; and any number of persons, not exceeding three may be so admitted.

Adjournment of trial.

(3) If any of the events mentioned in subsection 1 happen during the trial, the Election Court shall adjourn the trial in order that notice may be given as hereinbefore provided.

Disabilities of respondent in such case.

(4) A respondent who has given the prescribed notice shall not be allowed to appear or act as a party against the

petition in any proceeding thereon, and shall not sit or vote in the Assembly until the Assembly has been informed of the report on the petition; and the Court shall report the giving of the notice to the Speaker. 8 Edw. VII. c. 4, s. 75.

Trial for Corrupt Practices.

76.—(1) Any two of the Judges of the Supreme Court shall be and constitute a Court, hereinafter called the Summary Trial Court, for the trial of corrupt practices and of offences punishable under section 201 of *The Ontario Election Act* committed at or in connection with an election.

Court for trial of corrupt practices.

Rev. Stat. c. 8.

(2) For the purposes of this section the Election Court trying a petition shall be also a Summary Trial Court.

Election Court a summary trial court.

(3) If it is made to appear to a Judge of the Supreme Court or to an Election Court by affidavit or by the evidence taken on the trial of the petition or otherwise that any person is charged with or has committed any such corrupt practice or offence, the Judge or the Election Court, as the case may be, may order such person to appear before a Summary Trial Court to answer the charge stated in the order at the time and place named therein.

Order of Court where person charged with corrupt practice.

(4) The order may be served by delivering a copy thereof to the person charged or in such other manner as the Judge or the Election Court or the Summary Trial Court may direct.

Service of order.

(5) If the person charged does not attend at the time and place named in the order the Summary Trial Court may issue a warrant to compel his attendance.

Issue of warrant on non-attendance.

(6) At the time and place named in the order, and upon proof of the service thereof, whether the person charged appears or not the Summary Trial Court shall hear and determine the charge in a summary manner, and shall have the same powers, jurisdiction and authority for the investigation as an Election Court at the trial of a petition alleging corrupt practices, and may adjourn the hearing and the rendering of a decision from time to time and from place to place as may be deemed proper.

Disposal of case by Court.

Powers of Court.

(7) The person charged shall be entitled to be represented by counsel and to make his full answer and defence and to call and examine and to cross-examine witnesses in the same manner and to the same extent as a party to a petition.

Rights of person charged.

(8) If it is found that the person charged has been guilty of any corrupt practice or offence mentioned in the order, the Court shall adjudge the same accordingly, and shall order that the person charged shall suffer the imprisonment or shall pay the amount of the money penalty and in default suffer

Order for payment of money penalty and imprisonment, if any.

the imprisonment, authorized or provided by law for the corrupt practice or offence of which he has been found guilty, and if imprisonment is imposed may direct in what gaol or other place of confinement the person found guilty shall be imprisoned, and if no place is named the imprisonment shall be in the common gaol of the county in which the sentence is pronounced.

Costs

(9) The Court shall have power by the same or a subsequent order to direct by whom the costs of the person prosecuting the charge or of the person charged or any part thereof shall be paid, and where costs are payable by a person found guilty payment may be enforced in the same manner as the payment of a money penalty.

Imprisonment
in default of
payment of
money penalty.

(10) Where a money penalty is imposed the Court shall direct that in default of the amount being paid forthwith or within a time not exceeding one month, to be limited by the Court the person found guilty shall be imprisoned for a term not exceeding one year, in any gaol or other place of imprisonment to be named by the Court, unless the amount of the penalty shall be sooner paid; and in default of any place being named the imprisonment shall be in the common gaol of the county in which the sentence is pronounced.

Commence-
ment of term of
imprisonment.

(11) Where a money penalty is imposed in addition to imprisonment the term of imprisonment in default of payment shall begin at the expiration of such first mentioned imprisonment.

Power of Court
as to imprison-
ment.

(12) For the infliction of the imprisonment imposed whether in the first instance or in default of payment of a penalty or of costs the Court shall have the like authority as the Supreme Court to give effect to the judgment of the Court, and the sheriff and gaoler shall obey all orders of the Court made in that behalf.

Judgment a
bar.

(13) The judgment shall be a bar to any other proceeding against the same person for the offence of which he has been found guilty.

Notice to per-
son charged
when present
in court.

(14) If, upon the trial of a petition or upon the trial of any person under this section it appears to the Court that a person then present in Court has committed any such corrupt practice or offence, the Court may then and there state to him the corrupt practice or offence with which he is charged, and may appoint a time and place for his trial, and it shall not be necessary to serve any further order for his attendance and the same proceedings may be had as if an order had been made and served under subsections 3 and 4.

Direction of
prosecution.

(15) The Election Court may direct any counsel or solicitor present at the trial of a petition or the crown attorney of the county in which the trial takes place to institute and

carry on proceedings under this section against any person who from the evidence given at the trial appears to have committed such corrupt practice or offence.

(16) A Crown Attorney or a counsel or solicitor who is directed to institute and carry on proceedings shall be entitled to costs and fees according to the Supreme Court scale or to such scale as may be fixed by the Lieutenant-Governor in Council, and if such costs and fees are not recovered from the person charged they shall be paid in the case of a county in the first instance by the county and the county shall be reimbursed out of the Consolidated Revenue Fund, and in the case of a district they shall be paid out of the Consolidated Revenue Fund.

Fees of counsel
other than
Crown
Attorney.

(17) Witnesses shall be entitled to receive fees and allowances for attending at the proceedings payable on the scale, and in the manner provided by *The Crown Witnesses Act*.

Witness fees.

Rev. Stat.
c. 98.

(18) The Court may upon the application of the person prosecuting the charge make an order for payment forthwith of the penalty imposed and costs without directing imprisonment in default of payment, and that execution may be issued out of such office of the Supreme Court as the Court may direct, and that any other proceedings may be taken for the recovery of the penalty imposed and costs which might be taken upon a judgment of the Supreme Court.

Order for pay-
ment and issue
of execution.

(19) If a money penalty is recovered at the instance of a private prosecutor under this section one half shall belong to him and the other half to the Crown.

Application
of money
penalties.

(20) Where practicable the Election Court trying a petition shall, during such trial, or immediately thereafter, proceed with the trial of persons who appear to have committed or who are charged with having committed any such corrupt practices or offences.

Trial for cor-
rupt practices
to follow trial
of petition.

(21) Every such proceeding shall be commenced within the space of one year next after the corrupt practice or offence complained of was committed and not afterwards.

Limitation of
time for com-
mencement of
prosecution.

8 Edw. VII. c. 4, s. 76.

COSTS GENERALLY.

77. Except as otherwise herein provided the costs, charges and expenses of and incidental to or consequent upon or arising out of a petition shall be in the discretion of the Court or Judge before whom the proceeding is pending who shall have full power to determine by whom, in what manner and to what extent the same shall be paid. 8 Edw. VII. c. 4, s. 77.

Cost to be in
discretion of
Court.

78. If a petition is filed before the petitioner has notice of the filing of a disclaimer, and is dismissed in consequence of the disclaimer, the respondent shall pay all costs of the

When petition
filed before
notice of dis-
claimer.

petitioner up to the time the petitioner receives notice of the disclaimer, and the costs of the application to dismiss. 8 Edw. VII. c. 4, s. 78.

[For provisions as to candidates disclaiming, see *The Legislative Assembly Act*, secs. 18-22.]

When agent
may be ordered
to pay costs.

79.—(1) If, on the trial of a petition it is adjudged that a corrupt practice has been committed by an agent, but without the actual knowledge and consent of the candidate and costs are awarded against the candidate, the Election Court on the application of any party to the petition may order the agent to be summoned to appear before an Election Court at a time fixed in the order to show cause why he should not be ordered to pay such costs or so much thereof as may seem just and to indemnify the candidate against the payment thereof.

If agent does
not appear.

(2) If, at the time so fixed the agent does not appear he may be ordered upon the evidence given at the trial of the petition, and such further evidence, if any, as may be adduced to pay the whole or such part of the costs awarded against the candidate as may seem just, and to indemnify the candidate against the payment thereof, and if the agent appears such order may be made as may seem just after hearing the parties and such evidence as may be adduced.

Execution for
costs.

(3) The party to whom costs are awarded shall be entitled to issue execution for the amount ordered to be paid by the agent against the agent as well as against the candidate.

Repayment of
costs by agent
to candidate.

(4) If the costs awarded against the agent are paid by the candidate he shall be entitled to be repaid the same by the agent, and may upon the order of the Court or a Judge issue execution against the agent therefor. 8 Edw. VII. c. 4, s. 79.

Taxation and
recovery of
costs.

80.—(1) The total amount to be allowed for counsel fees in respect to the trial upon taxation as between party and party shall not exceed \$50 for the first day upon which the trial is held, and \$40 for each subsequent day during which it is continued.

Counsel fees.

(2) No greater sum than \$300 in addition to counsel fees shall be taxable against either party as costs in the cause in addition to witness fees and other actual and necessary disbursements taxable as between party and party in an action in the Supreme Court.

No limitation
in certain
cases.
Rev. Stat.
c. 8.

(3) This section shall not apply to costs taxable against a candidate who has incurred the penalties and disabilities provided by *The Ontario Election Act* for corrupt practices committed by him or with his actual knowledge and consent. 8 Edw. VII. c. 4, s. 80.

81.—(1) A party to whom costs are awarded against the petitioner may, within thirty days from the date of the judgment or order awarding the same or within such other time as the Court or Judge may allow, file the certificate of taxation with the Registrar and at the expiration of the said period shall be entitled to receive out of the deposit the amount taxed to him. Recovery of costs against petitioner.

(2) If the total amount of the certificates so filed exceeds the deposit each of the parties filing the same shall be entitled to receive his proportion thereof, and may forthwith issue execution for the residue. 8 Edw. VII. c. 4, s. 81. Where costs exceed deposit.

82. The costs of a petition shall not be awarded against a candidate where he is not, by the judgment of the Court, unseated; but this section shall not apply to cross petitions. 8 Edw. VII. c. 4, s. 82. Costs not to be awarded against candidate who is not unseated.

83. No costs beyond those taxable between party and party shall, in the absence of a special contract, be taxable between solicitor and client. 8 Edw. VII. c. 4, s. 83. Provisions as to costs not specially provided for.

MISCELLANEOUS.

84. Unless the Election Court otherwise directs, it shall not be necessary on the trial of a petition or of any proceeding under this Act to prove the writ of election or the return thereof. 8 Edw. VII. c. 4, s. 84. Writ, etc., need not be produced at trial.

85. The Court and any Judge of the Supreme Court, for the purpose of enforcing obedience to any judgment or order, or for punishing contempt shall have power to grant a writ of attachment. 8 Edw. VII. c. 4, s. 85. Power to punish for contempt and enforce rules.

86. The travelling and other expenses of the Judges and the expenses incurred by the sheriff in attending them, and providing a Court and accessories shall be paid out of moneys appropriated by this Legislature for that purpose. 8 Edw. VII. c. 4, s. 86. Travelling and other expenses of the Judges and Sheriff.

87. Where an Election Court reports that any person has been guilty of a corrupt practice, it shall be the duty of the crown attorney to prosecute such persons unless the Election Court otherwise directs. 8 Edw. VII. c. 4, s. 87. Prosecution of persons reported for corrupt practices.

88. No election or return shall be questioned except in accordance with the provisions of this Act. 8 Edw. VII. c. 4, s. 88. Election not to be questioned except under Act.

CHAPTER 11.

An Act respecting the Legislative Assembly.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Legislative Assembly Act*.
8 Edw. VII. c. 5, s. 1.

Assembly—
how composed. **2.** The Assembly shall be composed of so many members
Rev. Stat.
c. 5. as shall, from time to time, be fixed by *The Representation Act*. 8 Edw. VII. c. 5, s. 3, *part*.

Not dissolved
by demise of
the Crown. **3.**—(1) The Assembly shall not determine or be dissolved
by the demise of the Crown, but shall continue, and may
meet, convene and sit, proceed and act, in the same manner
as if such demise had not happened.

Power to pro-
rogue or dis-
solve not
affected. (2) Nothing in this section shall alter or abridge the
power of the Crown to prorogue or dissolve the Assembly.
8 Edw. VII. c. 5, s. 3, *part*.

Duration of
Assembly. **4.** Every Assembly shall continue for four years from the
fifty-fifth day after the date of the writs for the election
and no longer, subject to being sooner dissolved by the
Lieutenant-Governor. 8 Edw. VII. c. 5, s. 4.

Yearly
Session. **5.** There shall be a Session of the Legislature once at
least in every year, so that twelve months shall not intervene
between the last sittings of the Legislature in one Session
and its first sittings in the next. 8 Edw. VII. c. 5, s. 5.

Prorogation of
Legislature;
formal procla-
mations
unnecessary. **6.** It shall not be necessary for the Lieutenant-Governor
in proroguing the Legislature to name any day to which
the same is prorogued; nor to issue a formal proclamation
for a meeting of the Legislature when it is not intended that
the Legislature shall meet for despatch of business. 8 Edw.
VII. c. 5, s. 6.

DISQUALIFICATIONS.

Alien. **7.** No person who is not a British subject by birth or
naturalization shall be eligible as a member of the Assembly.
8 Edw. VII. c. 5, s. 7.

Senator or
Member of
House of Com-
mons dis-
qualified. **8.** No person who on the day of nomination for election
to the Assembly is a Senator or member of the House of
Commons of Canada shall be eligible as a member of the

Assembly or be returned as elected thereto, and if any such person receives a majority of votes at an election the votes cast for him shall be thrown away and the Returning Officer shall return the person having the next greatest number of votes if he is otherwise eligible. 8 Edw. VII. c. 5, s. 8.

9. If a member of the Assembly is elected and returned to the House of Commons or is appointed to the Senate of Canada, his seat in the Assembly shall thereupon be vacated and a writ shall issue forthwith for a new election to fill the vacancy. 8 Edw. VII. c. 5, s. 9.

10.—(1) Except as hereinafter specially provided, no person accepting or holding any office, commission or employment, permanent or temporary, in the service of the Government of Canada, or of the Government of Ontario, at the nomination of the Crown or at the nomination of any of the officers of the Government of Canada or of the Government of Ontario to which any salary, fee, wage, allowance, emolument or profit of any kind is attached shall be eligible as a member of the Assembly, or shall sit or vote therein.

(2) Nothing in this section shall render ineligible as aforesaid or disqualify from sitting and voting in the Assembly when not otherwise disqualified,

(a) A Member of the Executive Council;

Persons holding office, etc.
Members of Executive Council.

(b) An officer of His Majesty's Army or Navy, or an officer in the Militia or a Militiaman (except officers on the staff of the Militia receiving permanent salaries);

Officers in military or naval service.

(c) A Justice of the Peace, Coroner, Notary Public or Public School Inspector. 8 Edw. VII. c. 5, s. 10.

Justices of the Peace, etc.

11. No person holding or enjoying, undertaking or executing, directly or indirectly, alone or with another, by himself or by the interposition of a trustee or third person, any contract or agreement with His Majesty, or with any public officer or department, with respect to the public service of Ontario, or under which any public money of Ontario is to be paid for any service, work, matter or thing, shall be eligible as a member of or sit or vote in the Assembly. 8 Edw. VII. c. 5, s. 11.

Ineligibility of public contractors.

12.—(1) No person shall be ineligible as a member of the Assembly,

(a) By reason of his being interested as an executor, administrator or trustee only, having otherwise no beneficial interest in any such contract or agreement,

Exceptions.
Trustees for estates of contractors.

Shareholders
in contracting
companies
not
disqualified.

- (b) By reason of his being a shareholder or stockholder in an incorporated company having any such contract or agreement; unless such contract or agreement is for the building of a public work for the Province, and such building or work has not been let by tender to the lowest bidder,

Exceptions.

Lenders of
money to
Government.

- (c) By reason of his being a contractor for the loan of money or for securities for the payment of money to the Government of Ontario under the authority of the Legislature after public competition or respecting the purchase or payment of the public stock or debentures of Ontario on terms common to all persons,

Holder of
mining license,
etc.

- (d) By reason of his being the holder of a mining license or having a contract or agreement with His Majesty or with any public officer or department with respect to the same or to mines or mining rights; but no such person shall vote on any question affecting such license, contract or agreement or in which he is interested by reason thereof,

Owners and
persons inter-
ested in
certain
newspapers.

- (e) By reason of his being proprietor of or otherwise interested in a newspaper or other periodical publication in which official advertisements are inserted which appear in other newspapers or publications in Ontario, or which is subscribed for by the Government of Ontario, or any department thereof, or by any of the public institutions of the Province, unless such advertisements or subscriptions are paid for out of the public moneys of Ontario, at rates greater than usual rates,

Timber
licensee.

- (f) By reason of his holding a license, permit or permission for cutting timber, or being interested in any such license, permit or permission, directly or indirectly, alone or with another, by himself or by the interposition of a trustee or third person, or by reason of there being money due or payable to His Majesty in respect of timber cut; but no such person shall vote on any question affecting such license, permit or permission, or in which he is interested by reason thereof,

Fishery
licensees.

- (g) By reason of his being the holder of a fishery license, or having a contract or agreement with His Majesty or with any public officer or department with respect to the same or to fisheries or fishing rights; but no such person shall vote on any question affecting such license, contract or agreement, or in which he is interested by reason thereof,

- (h) By reason of his being a surety or contractor or Certain sureties or obligors. liable for the payment of money for or on account of the maintenance or tuition of an inmate or pupil of any Government institution,
- (i) By reason of his being a postmaster elsewhere than Certain postmasters and mail carriers. in a city, town or incorporated village, or interested in a contract for carrying the mail between two or more post offices neither of which is in a city, town or incorporated village or of his being the surety of any such postmaster or contractor,
- (j) By reason of his being a surety for a public officer Sureties of public officers. or Ontario Land Surveyor or other person required by law to furnish security to the Crown.

(2) A person elected a member of the Assembly, who is Duty of sureties who have been elected. at the time of his election a surety as aforesaid, shall, before he sits or votes therein take and complete such action as may be requisite to relieve him from any thereafter accruing liability in respect of his suretyship, and no person who is liable as such surety in respect of any accruing matter shall sit or vote in the Assembly. 8 Edw. VII. c. 5, s. 12.

13. No disqualification, under sections 10 or 11 on any ground arising before the election shall be held by any Court to affect the seat of a member of the Assembly or to disentitle any person to sit or vote therein, until such disqualification has been duly found and declared by an Election Court; but this is not to be construed as affecting the cases provided for by subsection 2 of section 12; nor as affecting the right of the Assembly to expel a member according to the practice of Parliament or otherwise. When disqualification to become operative. Exceptions 8 Edw. VII. c. 5, s. 13.

14. If a person who is disqualified or ineligible or incapable of being elected a member of the Assembly, is nevertheless elected and returned, his election and return Effect of election of disqualified person. shall be null and void. 8 Edw. VII. c. 5, s. 14.

15.—(1) If a member of the Assembly by becoming a Disqualification through acceptance of office. member of the Executive Council, or by accepting any other office or becoming a party to a contract or agreement as in sections 10 and 11 mentioned, is disqualified by law to continue to sit or vote in the Assembly, his seat shall be Re-election. vacated; but he may be re-elected if he is not declared ineligible under this Act.

(2) Nevertheless, whenever any person holding the office of President of the Council, Attorney-General, Secretary and Registrar of Ontario, Treasurer of Ontario, Minister of Lands, Forests and Mines, Minister of Agriculture, Saving in case of exchange of offices in Executive Council.

Minister of Public Works, or Minister of Education, and being at the same time a member of the Assembly, resigns his office, and within one month after his resignation accepts any other of the said offices, he shall not thereby vacate his seat in the Assembly, unless the Administration of which he was a member has resigned, and a new Administration occupies the said offices; and in case a member of the Executive Council holding any one of the said offices, is appointed to hold another office in addition to or in connection with such first mentioned office, he shall not thereby vacate his seat; and any increase or change of emolument arising from the holding of such two offices shall not cause a vacancy, or render a re-election necessary. 8 Edw. VII. c. 5, s. 15.

Penalty upon
disqualified
person
sitting or
voting.

16.—(1) Subject to the provisions of section 13, a person ineligible as a member of or disqualified from sitting or voting in the Assembly who sits or votes therein while he is so ineligible or disqualified, shall forfeit the sum of \$2,000 for every day on which he so sits or votes, and the said sum may be recovered from him by any person who sues for the same in any court of competent jurisdiction.

Recovery.

Idem.

(2) If any action is brought and judgment is recovered against the defendant, no other action shall be brought or proceeding taken against the same person for any offence under this section committed before notice to him of the recovery of the judgment.

Staying
proceedings
in other
actions.

(3) The Court wherein any other action is brought, contrary to the intent and meaning of this Act, may upon the defendant's motion, stay the proceedings therein, if the first mentioned action be prosecuted without fraud, and with effect; but no action shall be deemed an action within this section, unless so prosecuted. 8 Edw. VII. c. 5, s. 16.

OATH OF MEMBER-ELECT.

Affidavit as to
election ex-
penses, etc.

17. Before a member elect is permitted to take the oath required by section 128 of *The British North America Act*, he shall file with the Clerk, an affidavit, Form I. 8 Edw. VII. c. 5, s. 17.

DISCLAIMER.

Disclaimer by
member elect.

18. A member elect may at any time before his election is complained of disclaim his seat in the manner hereinafter provided, and he shall thereby vacate the seat, and cease to be a member in respect of the seat so disclaimed. 8 Edw. VII. c. 5, s. 18.

Mode of
disclaiming.

19. A member elect who desires to disclaim may transmit, postpaid and registered, through the post office, directed to "The Clerk of the Legislative Assembly, Toronto," or may cause to be delivered to the Clerk, a disclaimer signed

by the member in the presence of two subscribing witnesses to the effect following:—

“I, A. B., member elect to the Legislative Assembly for the electoral district of _____, hereby disclaim all my right or title to sit or vote or in any manner to act as such member.” Form of disclaimer.

8 Edw. VII. c. 5, s. 19.

20. The Clerk shall, on receiving a disclaimer, forthwith send a copy thereof Transmission of copy of disclaimer.

(a) In the case of an election which has taken place in the County of York or the City of Toronto, to the Registrar of the Appellate Division at Toronto; In County of York or Toronto.

(b) In the case of an election which has taken place elsewhere, to the Local Registrar, or if there is no Local Registrar, to the Deputy Clerk of the Crown of the High Court for the County or Provisional Judicial District, as the case may be, in which the electoral district for which the member so disclaiming or any part thereof is situate was elected. 8 Edw. VII. c. 5, s. 20. In other places.

21. A petition which has been presented before the petitioner has notice of the filing of a disclaimer and in which the election is complained of on any ground other than of corrupt practices committed by the member elect or of corrupt practices having extensively prevailed at the election and in which the seat is not claimed for the petitioner or some other person, may be dismissed by a Judge of the Appellate Division on notice to the petitioner and on proof by affidavit that such disclaimer has been given in the prescribed manner. 8 Edw VII. c. 5, s. 21. Dismissal of petition where disclaimer filed.

22. If no petition is filed within the time limited for that purpose by *The Ontario Controverted Elections Act*, or if the petition is dismissed, the Lieutenant-Governor in Council may direct the issue of a new writ for the election of a member in the place of the member disclaiming. 8 Edw. VII. c. 5, s. 22. Issuing writ when no petition filed after disclaimer. Rev. Stat. c. 10.

RESIGNATION.

23. If a person returned as elected for one or more Electoral Districts at a general election wishes to resign his seat, or one of his seats, before the first meeting of this Legislature thereafter, he may address and cause to be delivered to any two members elect of the Assembly a declaration that he resigns his seat, made in writing under his hand before two subscribing witnesses, and the two members upon receiving the declaration shall forthwith address their warrant under their hands and seals to the Resignation before meeting of Legislature.

Clerk of the Crown in Chancery for the issue of a writ for the election of a member for the Electoral District in the place of the member so resigning, and the writ shall issue accordingly. 8 Edw. VII. c. 5, s. 23.

In other cases.

24.—(1) A member may also resign his seat—

(a) By giving in his place in the Assembly notice of his intention to resign it, which notice shall be immediately entered by the Clerk upon the Journals of the Assembly; or

(b) By addressing and causing to be delivered to the Speaker a declaration that he resigns his seat, made in writing under his hand before two subscribing witnesses, which declaration may be so made and delivered either during a session of this Legislature or in the interval between two sessions.

Record.

(2) An entry of the declaration so delivered to the Speaker shall thereafter be made upon the Journals of the Assembly.

New writ.

(3) Immediately after the notice of intention to resign has been entered upon the Journals, or after the receipt of the declaration, as the case may be, the Speaker shall address his warrant under his hand and seal to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member in the place of the member so resigning, and in either case a writ shall issue accordingly. 8 Edw. VII. c. 5, s. 24.

Where there is no Speaker, or the member is himself the Speaker.

25. If a member wishes to resign his seat in the interval between two Sessions of this Legislature, and there is then no Speaker, or the Speaker is absent from the Province, or if the member is himself the Speaker, he may address and cause to be delivered to two members, the declaration before mentioned, and the two members, upon receiving the declaration, shall forthwith address their warrant under their hands and seals to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member in the place of the member so resigning, and the writ shall issue accordingly. 8 Edw. VII. c. 5, s. 25.

Consequences of resignation.

26.—(1) A member or member elect tendering his resignation in any manner hereinbefore provided for shall be deemed to have vacated his seat and to have ceased to be a member of the Assembly in respect thereof.

Time for resignation.

(2) A member or member elect shall not tender his resignation while his election is controverted, nor until after the expiration of the time within which an election petition may be filed. 8 Edw. VII. c. 5, s. 26.

27. Forthwith after the receipt by the Speaker, or if there is no Speaker, or the Speaker is absent from the Province, by the Clerk of the House, of a certificate under *The Ontario Controverted Elections Act* that an election was void, the Speaker or Clerk, as the case may be, shall address his warrant under his hand and seal to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member for the electoral district, the election for which has been certified to be void, and the writ shall issue accordingly. 8 Edw. VII. c. 5, s. 27.

Issue of writ
for new elec-
tion, when
election de-
clared void.

Rev. Stat.
c. 10.

28. The Speaker shall forthwith after the receipt of the certificate, in the next preceding section mentioned, communicate the same to the Clerk of the Assembly. 8 Edw. VII. c. 5, s. 28.

Notification.

29. The proceedings taken under the next preceding six sections by the Speaker or Clerk shall be reported to the Assembly at the earliest practicable time, and shall be forthwith entered on the Journals. 8 Edw. VII. c. 5, s. 29.

Report to
Assembly.

30.—(1) If a person returned as elected appears by the certificate mentioned in section 27 not to have been duly returned or elected, he shall not thereafter unless re-elected sit or vote in that Assembly.

Disqualifica-
tion of
persons de-
clared not
elected.

(2) If a person, other than the person returned as elected, appears by the certificate to have been duly returned or elected, he shall thereupon be entitled to sit and vote in the Assembly. 8 Edw. VII. c. 5, s. 30.

Rights of
persons de-
clared elected.

31. No writ shall issue under any of the provisions of the next preceding eight sections during a Session of the Assembly. 8 Edw. VII. c. 5, s. 31.

Writ not to
issue during
session.

32.—(1) If a vacancy happens in the Assembly by the death of a member, or by his accepting an office, commission or employment, or by his becoming a party to a contract as mentioned in section 11, unless otherwise provided by this Act, the Speaker, on being informed of the vacancy by a member of the Assembly in his place, or by notice in writing under the hands and seals of two members, shall forthwith address his warrant to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member to fill the vacancy, and a writ shall issue accordingly.

Proceedings
in case of
vacancy by
death or ac-
ceptance of
office.

(2) If any such vacancy happens, or at any time thereafter, before the warrant for the writ has issued, there is no Speaker, or the Speaker is absent from the Province, or if the member whose seat is vacated is himself the Speaker, then two members may address their warrant under their hands and seals to the Clerk of the Crown in Chancery for

Proceedings
when Speaker
is absent from
Ontario, or
there is no
Speaker.

the issue of a writ for the election of a member to fill the vacancy, and the writ shall issue accordingly. 8 Edw. VII. c. 5, s. 32.

Filling a vacancy before Assembly meets after a general election.

33.—(1) A warrant may issue under the hands and seals of two members elect to the Clerk of the Crown in Chancery for the issue of a writ for the election of a member to fill a vacancy arising subsequently to a general election and before the first meeting of the Assembly thereafter, by reason of any of the causes mentioned in the next preceding section, and the writ may issue at any time after such vacancy.

Election being contested not affected.

(2) The election to be held under the writ shall not affect the right of any person entitled to contest the previous election; and the Election Court shall determine whether the member who has died or whose seat has become vacant as aforesaid, or any other person, was duly returned or elected, which determination, if adverse to the return of such member and in favour of any other candidate, shall avoid the election held under this section, and the candidate declared duly elected at the previous election shall be entitled to take his seat as if no subsequent election had been held. 8 Edw. VII. c. 5, s. 33.

Where vacancy exists for three months.

34. Subject to the provisions of section 31, if the seat of a member of the Assembly has been vacant for three months and no writ has been issued, the Clerk of the Crown in Chancery shall issue the writ forthwith. 8 Edw. VII. c. 5, s. 34.

THE SPEAKER.

Election of Speaker.

35. The Assembly at its first meeting after a general election shall proceed to elect one of its members to be Speaker. 8 Edw. VII. c. 5, s. 35.

Filling vacancy in office of Speaker.

36. In case of a vacancy happening in the office of Speaker, the Assembly shall proceed to elect another of its members to be Speaker. 8 Edw. VII. c. 5, s. 36.

Salary.

37. Such salary shall be payable to the Speaker as may be appropriated for that purpose. 8 Edw. VII. c. 5, s. 37.

Duty to preside.

38. The Speaker shall preside at all meetings of the Assembly. 8 Edw. VII. c. 5, s. 38.

In case of illness, etc., of the Speaker.

39. Whenever the Speaker finds it necessary to leave the chair during any part of the sittings on any day, he may call upon any member to take the chair and to act as Speaker during the remainder of the day unless the Speaker himself resumes the chair before the close of the sittings for that day. 8 Edw. VII. c. 5, s. 39.

40. Whenever the Speaker is not present at the meeting of the Assembly on any day, the Assembly may elect a member to take the chair and act as Speaker for that day. Election of Speaker for the day.
8 Edw. VII. c. 5, s. 40.

41. If the Speaker is absent from the chair for a period of forty-eight consecutive hours, the Assembly may elect another of its members to act as Speaker, and the member so elected shall during the continuance of the absence of the Speaker have and execute all the powers, privileges, and duties of Speaker. Election of Speaker pro tem.
8 Edw. VII. c. 5, s. 41.

42. Every Act passed, and every order made and thing done by the Assembly while any member is acting as Speaker, shall be as valid and effectual as if done while the Speaker himself was in the chair. Validity of acts while acting Speaker presides.
8 Edw. VII. c. 5, s. 42.

POWERS AND PRIVILEGES OF THE ASSEMBLY.

43. The Assembly may at all times command and compel the attendance before the Assembly, or a Committee thereof, of such persons, and the production of such papers and things as the Assembly or Committee may deem necessary for any of its proceedings or deliberations. Power to compel attendance of witnesses, etc.
8 Edw. VII. c. 5, s. 43.

44. Whenever the Assembly requires the attendance of any person before the Assembly or a Committee thereof, the Speaker may issue his warrant directed to the person named in the Order of the Assembly, requiring the attendance of such person before the Assembly or Committee and the production of such papers and things as may be ordered. Speaker's warrant for attendance, etc.
8 Edw. VII. c. 5, s. 44.

45. No person shall be liable, in damages or otherwise, for any act done under the authority of the Assembly, and within its legal power, or under or by virtue of a warrant issued under such authority; every such warrant may command the aid and assistance of all sheriffs, bailiffs, constables, and others; and every refusal or failure to give such aid or assistance when required shall be a contravention of this Act. Protection of persons acting under authority. Warrants may command aid.
8 Edw. VII. c. 5, s. 45.

46. A member of the Assembly shall not be liable to any civil action or prosecution, arrest, imprisonment, or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the Assembly or a Committee thereof. Privilege of speech, etc.
8 Edw. VII. c. 5, s. 46.

47. Except for a contravention of this Act, a member of the Assembly shall not be liable to arrest, detention or molestation for any cause or matter whatever of a civil Freedom from arrest.

nature, during a Session of the Legislature, and during the twenty days preceding and the twenty days following the Session. 8 Edw. VII. c. 5, s. 47.

Exemption of members and officers from serving as jurors.

48. During the periods mentioned in the next preceding section members, officers and employees of the Assembly, and witnesses summoned to attend before the Assembly or a Committee thereof, shall be exempt from serving or attending as jurors in any Court of Justice in Ontario. 8 Edw. VII. c. 5, s. 48.

Members not to receive fees for drafting bills, etc.

49. No member of the Assembly shall knowingly accept or receive, either directly or indirectly, any fee, compensation or reward for or in respect of the drafting, advising upon, revising, promoting or opposing any bill, resolution, matter or thing submitted or intended to be submitted to the Assembly or a Committee thereof. 8 Edw. VII. c. 5, s. 49.

Barristers, etc., being partners of members not to receive fees for drafting bills, etc.

50. No barrister or solicitor who, in the practice of his profession, is a partner of a member of the Assembly, shall knowingly accept or receive, directly or indirectly, any fee, compensation or reward for or in respect of any matter or thing in the next preceding section mentioned. 8 Edw. VII. c. 5, s. 50.

Penalty for violation of ss. 49 and 50.

51. Any person violating any of the provisions of the next preceding two sections shall incur a penalty equal to the amount or value of the fee, compensation or reward accepted or received by him and the sum of \$500. 8 Edw. VII. c. 5, s. 51.

Breach of s. 49 to be deemed a corrupt practice.

52. Any violation of section 49 shall be a corrupt practice, and an election petition setting up the same may be filed within six months after the offence in the same manner, and the proceedings thereupon shall be the same as in the case of other election petitions. 8 Edw. VII. c. 5, s. 52.

Vacation of seat.

53. If judgment is recovered against a member of the Assembly for any penalty under section 51 of this Act, or if by a resolution of the Assembly it is declared that a member thereof has been guilty of a violation of section 49, or if upon an election petition it is found that a member has been guilty of a violation of section 49, his election shall become void, and his seat shall be vacated, and a writ shall issue for a new election as if he were naturally dead and he shall be incapable of being elected to or of sitting in the Assembly during the remainder of the term for which he was elected. 8 Edw. VII. c. 5, s. 53.

Jurisdiction of Assembly.

54.—(1) The Assembly shall have all the rights and privileges of a Court of Record for the purposes of sum-

marily inquiring into and punishing, as breaches of privilege or as contempts and without affecting the liability of the offenders to prosecution and punishment criminally or otherwise according to law, independently of this Act, the acts, matters and things following:—

- (a) Assault, insult or libel upon a member of the ^{Assaults, in-}Assembly during the Session of the Legislature ^{sults, libels,} and twenty days before and after the same;
- (b) Obstructing, threatening or attempting to force or ^{Threats,} intimidate a member of the Assembly;
- (c) Offering to, or the acceptance by, a member of the ^{Bribery and}Assembly of a bribe to influence him in his pro- ^{offering of fee,}ceedings as such, or offering to or the acceptance by a member of any fee, compensation or reward for or in respect of the drafting, advising upon, revising, promoting or opposing any bill, resolution, matter or thing submitted to or intended to be submitted to the Assembly or a Committee thereof;
- (d) Assault upon or interference with an officer of the ^{Interference}Assembly, while in the execution of his duty; ^{with officers,}
- (e) Tampering with a witness in regard to evidence to ^{Tampering}be given by him before the Assembly, or a Com- ^{with witness,}mittee thereof;
- (f) Giving false evidence or prevaricating or misbe- ^{False}having in giving evidence or refusing to give ^{evidence,}evidence or to produce papers before the Assembly or a Committee thereof;
- (g) Disobedience to a warrant requiring the attendance ^{Disobedience}of a witness before the Assembly or a Committee ^{to subpoena,}thereof, or refusal or neglect to obey a warrant mentioned in section 45.
- (h) Presenting to the Assembly or to a Committee ^{Punishment}thereof a forged or false document, with intent ^{for contraven-}to deceive the Assembly or Committee; ^{tion of s. 54.}
- (i) Forging, falsifying or unlawfully altering a record ^{Falsifying}of the Assembly, or of a Committee thereof, or ^{records, etc.}any document or petition presented or filed or intended to be presented or filed before the Assembly or Committee, or the setting or subscribing, by any person, of the name of another person to any such document or petition with intent to deceive;
- (j) Taking any civil proceeding against, or causing or ^{Preventing a}effecting the arrest or imprisonment of a member ^{tion of a mem-}of the Assembly in any civil proceeding, for or ^{ber, or causing}as member, by reason of any matter or thing brought by

him by petition, bill, resolution, motion or otherwise, or said by him before the Assembly or a Committee thereof;

Arresting for debt, etc.

(k) Causing or effecting the arrest, detention, or molestation of a member of the Assembly for any cause or matter of a civil nature, during a Session of the Legislature, and, during the twenty days following and the twenty days preceding the Session.

Jurisdiction given as to inquiring and punishing.

(2) For the purposes of this Act, the Assembly shall possess all powers and jurisdiction necessary or expedient for inquiring into, adjudging and pronouncing upon the commission or doing the acts, matters or things mentioned in subsection 1 and for awarding and carrying into execution the punishment thereof. 8 Edw. VII. c. 5, s. 54.

Punishment for contravention of s. 54.

55. Every person who, upon such inquiry, is found to have committed or done any of the acts, matters, or things in section 54 mentioned, in addition to any other penalty or punishment to which he may by law be subject, shall be liable to imprisonment for such time, during the Session of this Legislature then being held, as may be determined by the Assembly. 8 Edw. VII. c. 5, s. 55.

Proceeding on contravention of s. 54 and arrest thereunder.

56.—(1) Wherever the Assembly declares that any person has been guilty of any breach of privilege or of a contempt in respect of any of the acts, matters and things in section 54 mentioned and directs that such person shall be kept and detained in the custody of the Sergeant-at-Arms attending the Assembly, the Speaker shall issue his warrant to the Sergeant-at-Arms to take such person into custody and to keep and detain him in custody in accordance with the order of the Assembly.

Warrant of committal

(2) Where the Assembly directs that the imprisonment shall be in the common gaol in the County of York, the Speaker shall issue his warrant to the Sergeant-at-Arms and to the governor or keeper of such common gaol commanding the Sergeant-at-Arms to take such person into custody and to deliver him to the governor or keeper of such common gaol, and commanding the governor or keeper of the common gaol to receive and keep and detain him in custody in accordance with the order of the Assembly. 8 Edw. VII. c. 5, s. 56.

Decision of Assembly to be final.

57. The determination of the Assembly upon any proceeding under this Act shall be final and conclusive. 8 Edw. VII. c. 5, s. 57.

Protection of persons publishing papers by order of Assembly.

58.—(1) Any person who is a defendant in any civil proceeding commenced in any manner for or in respect of the publication of any report, paper, vote or proceeding by such person or by his servant, by or under the authority

of the Assembly may bring before the Court in which such proceeding is pending (first giving 24 hours' notice of his intention so to do to the plaintiff or his solicitor), a certificate under the hand of the Speaker, or of the Clerk of the Assembly, stating that the report, paper, vote or proceeding in respect whereof such proceeding has been commenced was published by such person or by his servant by order or under the authority of the Assembly together with an affidavit verifying such certificate.

(2) The Court shall thereupon immediately stay such proceeding and the same and every writ or process issued therein shall be taken to be finally put an end to, determined and superseded. 8 Edw. VII. c. 5, s. 58. Stay of proceedings.

59.—(1) If a civil proceeding is commenced for or in respect of the publication of any copy of such report, paper, vote or proceeding, the defendant at any stage of the proceeding may lay before the Court such report, paper, vote or proceeding and such copy with an affidavit verifying such report, paper, vote or proceeding and the correctness of such copy. Production of papers to court.

(2) The Court shall thereupon immediately stay such proceeding and the same and every writ or process issued therein shall be taken to be finally put an end to, determined and superseded. 8 Edw. VII. c. 5, s. 59. Stay of proceedings.

60. It shall be a good defence to any civil proceeding against a person for printing any extract from or abstract of any such report, paper, vote or proceeding, that the extract or abstract was published *bona fide* and without malice. 8 Edw. VII. c. 5, s. 60. Bona fide publication.

61. Except so far as is provided by section 49, nothing herein shall be construed to deprive the Assembly, or a Committee or member thereof, of any right, immunity, privilege or power which the Assembly, Committee or member might otherwise have been entitled to exercise or enjoy. 8 Edw. VII. c. 5, s. 61. Savings of privileges inherent in Assembly or members.

QUORUM AND MANNER OF VOTING.

62. At least twenty members of the Assembly shall be necessary to constitute a quorum for the transaction of business, and for that purpose the Speaker shall be counted. 8 Edw. VII. c. 5, s. 62. Quorum.

63. Questions arising in the Assembly shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal the Speaker shall have a vote. 8 Edw. VII. c. 5, s. 63. Voting.

MONEY VOTES.

Condition precedent to appropriations.

64. The Assembly shall not originate or pass any vote, resolution, address or bill for the appropriation of any part of the Consolidated Revenue Fund, or of any tax or impost, to any purpose which has not been first recommended by a message of the Lieutenant-Governor to the Assembly during the Session in which the vote, resolution, address or bill is proposed. 8 Edw. VII. c. 5, s. 64.

ESTATE BILLS.

Commissioners on estate bills.

65. The Judges of the Supreme Court shall be *ex officio* commissioners to report under the Rules and Orders of the Assembly, in respect of estate bills. 8 Edw. VII. c. 5, s. 65.

OATHS TO WITNESSES.

Power of committees to examine on oath.

66. Any standing or select committee of the Assembly may require that facts, matters and things relating to the subject of inquiry be verified or otherwise ascertained by the oral examination of witnesses, and may examine witnesses upon oath, and for that purpose the Chairman or any member of the Committee may administer the oath, Form 2. 8 Edw. VII. c. 5, s. 66.

Affidavits.

67. Where witnesses are not required to be orally examined, an affirmation, declaration, or affidavit, which is required to be made or taken by or according to any rule or order of the Assembly, or by the direction of any Committee, and in respect of any matter or thing pending or proceeding before the Committee, may be made and taken before the Clerk of the Assembly, the Clerk of the Committee, or a Commissioner for taking affidavits or a Justice of the Peace. 8 Edw. VII. c. 5, s. 67.

INDEMNITY TO MEMBERS.

Allowance to members for attendance at any session.

68. In every Session of the Assembly there shall be allowed to each member attending the Session \$20 for each day's attendance, if the Session does not extend beyond thirty days, and if the Session extends beyond thirty days, then there shall be payable to each member attending such Session a sessional allowance of \$1,400. 1 Geo. V. c. 3, s. 1, *part*.

Deductions for non-attendance

What shall be reckoned as days of attendance.

69.—(1) A deduction at the rate of \$15 per day shall be made from his sessional allowance for every day on which a member does not attend sittings of the Assembly, or of some Committee thereof in case the Assembly sits on such days, but each day during the Session, after the first on which the member attends on which there has been no sittings of the Assembly, in consequence of its having adjourned over the

day or on which the member is travelling *bona fide* on his way to the place where the Session is held, for the purpose of attending a sittings of the Assembly or on which the member was in the place where the Session was held, or within ten miles thereof, but was prevented by sickness from attending the sittings shall be reckoned as a day of attendance at the Session.

(2) No deduction shall be made for or on account of the necessary absence of a member, so long as such absence does not exceed six days during the Session. 1 Geo. V. c. 3, s. 1, *part*. When deduction not to be made for absence.

70. The compensation may be paid from time to time as the member becomes entitled to it, to the extent of \$20 for each day's attendance, and the remainder shall be retained by the Clerk until the close of the Session, when the final payment shall be made. 1 Geo. V. c. 3, s. 1, *part*. How the compensation payable.

71. If a person is from any cause a member of the Assembly for a part only of a Session, then in case he is a member for upwards of thirty days during the Session, he shall be entitled to the sessional allowance, subject to the deduction for non-attendance as a member and also to a deduction of \$20 for each day of the Session before he was elected or after he ceased to be a member; but if he is a member for thirty days or less, he shall be entitled only to \$20 for each day's attendance at the Session whatever be the length thereof. 1 Geo. V. c. 3, s. 1, *part*. Where a person is a member for only part of the Session.

72. There shall also be allowed to every member ten cents for every mile of the distance between his place of residence and Toronto, reckoning the distance going and coming according to the shortest mail route, which distance shall be determined and certified by the Speaker. 8 Edw. VII. c. 5, s. 73. Allowance for mileage.

73. The sum due to every member at the close of a Session shall be paid to him, on his taking and signing before the Clerk or Accountant or a Justice of the Peace, an oath, to be kept by the Clerk, stating the number of days' attendance and the mileage according to the shortest mail route, as determined and certified by the Speaker, and the amount of the allowance, after deducting the number of days, if any, which are to be deducted under any preceding section; and the oath may be according to Form 3. 1 Geo. V. c. 3, s. 1, *part*. Final payment at the close of Session.

FORM 1.

OATH OF MEMBER ELECT.

I, _____ of the _____
 in the County of _____, elected to represent the Electoral
 District of _____ (as the case may be), in the Legislative
 Assembly of the Province of Ontario, make oath and say:—That,
 except in respect of my personal expenses, I have not made, before,
 during or since my election, any payment, advance, loan, or
 deposit for the purposes of the election last held for the said Elec-
 toral District otherwise than through my official agent appointed
 under *The Ontario Election Act*; and that I will not hereafter make
 any payment, loan or deposit in respect of the said election, ex-
 cept through my official agent appointed under the said Act. I
 further say that I have not been guilty of any corrupt practice in
 respect of my election.

Sworn before me, this _____
 day of _____, 19 _____

Clerk of the Legislative Assembly. }

8 Edw. VII. c. 5, Form 1.

FORM 2.

OATH TO BE ADMINISTERED.

The evidence you shall give to this Committee touching the sub-
 ject of the present inquiry shall be the truth, the whole truth, and
 nothing but the truth: So help you God.

8 Edw. VII. c. 5, Form 2.

FORM 3.

OATH TO OBTAIN SESSIONAL ALLOWANCE.

I, *A. B.*, a member of the Legislative Assembly, make oath and say
 that I reside at _____, in _____, which is distant
 by the shortest mail route _____ miles, as determined by
 the Speaker, from Toronto, where the Session which began on the
 day of _____, 19 _____, was held.

That the first day during the said Session on which I was present
 was the _____ day of _____, 19 _____.

That on the said day, and on each day of the said Session, after
 the said day, on which there was a sittings of the Assembly, I
 attended such sittings, or a sittings of some Committee thereof,
 (a) except only on _____ days, (b) on _____, of which I
 was travelling bona fide on my way to the place where the Session
 is held for the purpose of attending a sittings of the Assembly, and
 (c) on _____ of which I was prevented by sickness from attend-

ing, though I was then present at the said City of Toronto, or within ten miles thereof (d).

(Signature) A. B.

Sworn before me at , the day of , 19 .

L. K. C.
Clerk (or Accountant) of the Legislative Assembly,
or Justice of the Peace for the
of (as the case may be).

If the member attended a sittings of the Assembly or of some Committee on every sitting day after the first on which he so attended, omit the words from (a) to (d); and if his non-attendance was not on any day occasioned by travelling as therein set out or by sickness, omit the words from (b) to (d).

If the person making the declaration became or ceased to be a member after the commencement of the Session, vary the form so as to state correctly the facts upon which the sum due to the member is to be calculated.

1 Geo. V. c. 3, s. 3.

SECTION IV.

EXECUTIVE GOVERNMENT AND
PUBLIC OFFICERS.

CHAPTER 12.

An Act respecting the Lieutenant-Governor
and his Deputies.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Lieutenant-Governor's Act*. 10 Edw. VII. c. 3, s. 1.

Powers
vested in
Lieutenant-
Governor.

2. In matters within the jurisdiction of this Legislature all powers, authorities and functions which, in respect of like matters, were vested in or exercisable by the Governors or Lieutenant-Governors of the several provinces now forming part of the Dominion of Canada or any of the said provinces, under commissions, instructions or otherwise, at or before the passing of *The British North America Act, 1867*, are, and shall be, so far as this Legislature has power thus to enact, vested in and exercisable by the Lieutenant-Governor or Administrator for the time being of Ontario, in the name of His Majesty or otherwise as the case may require subject always to the Royal Prerogative as heretofore. 10 Edw. VII. c. 3, s. 2.

Power to
remit
sentences.

3. The next preceding section shall be deemed to include the power of commuting and remitting sentences for offences against the laws of Ontario, or offences over which the legislative authority of Ontario extends. 10 Edw. VII. c. 3, s. 3.

Construction
of Act.

4. Nothing in this Act contained shall be construed to imply that the Lieutenant-Governor or Administrator has not had heretofore the powers, authorities and functions in the next preceding two sections mentioned. 10 Edw. VII. c. 3, s. 4.

5. The Lieutenant-Governor and his successors shall be a corporation sole;—and all bonds, recognizances, and other instruments by law required to be taken to him in his public capacity, shall be taken to him and his successors by his name of office, and may be sued for and recovered by him or his successors, by his or their name of office as such; and the same shall not in any case go to or vest in the personal representatives of the Lieutenant-Governor, during whose government the same were so taken. 10 Edw. VII. c. 3, s. 5.

Lieutenant-Governor to be a corporation sole.

6. The Lieutenant-Governor may, with the advice and consent of the Executive Council, from time to time appoint any person or persons, jointly or severally, to be his Deputy or Deputies for Ontario or any part or parts thereof, for the purpose of executing marriage licenses, money warrants and commissions under any Act of this Legislature. 10 Edw. VII. c. 3, s. 6.

Power to appoint Deputies for certain purposes.

CHAPTER 13.

An Act respecting The Executive Council.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

1. This Act may be cited as *The Executive Council Act*.

Executive Council—
how
composed.

2. The Executive Council shall be composed of such persons as the Lieutenant-Governor from time to time appoints, and all Executive Councillors so appointed shall be Ministers of the Crown, and shall rank among themselves in the order of their appointments respectively. 10 Edw. VII. c.4, s. 1.

Ministers
with
portfolio.

3. The Lieutenant-Governor may appoint under the Great Seal from among such Ministers of the Crown the following Ministers to hold office during pleasure: a President of the Council, an Attorney-General, a Secretary and Registrar, a Treasurer, a Minister of Lands, Forests and Mines, a Minister of Agriculture, a Minister of Public Works, a Minister of Education, and such other Ministers as he may see fit; and may by Order-in-Council prescribe their duties and the duties of the several Departments over which they preside, and of the officers and clerks thereof, and all Ministers of the Crown not holding any of the above-mentioned offices shall be styled Ministers without Portfolio. 10 Edw. VII. c. 4, s. 2.

Ministers
without
portfolio.Salaries of
Ministers.

4.—(1) The annual salaries of the following Ministers, members of the Executive Council, shall be:

The Attorney-General	\$6,000
The Secretary and Registrar of Ontario.....	\$6,000
The Treasurer of Ontario	\$6,000
The Minister of Lands, Forests and Mines	\$6,000
The Minister of Agriculture	\$6,000
The Minister of Public Works	\$6,000
The Minister of Education	\$6,000
The President of the Executive Council	\$6,000

Additional
for the First
Minister.

(2) The Member of the Executive Council holding the recognized position of First Minister shall receive in addition \$3,000 per annum.

How charge-
able and
payable.

(3) The said salaries shall be chargeable upon and payable yearly and *pro rata* for any period less than a year out of any

unappropriated moneys forming part of the Consolidated Revenue Fund of Ontario. 7 Edw. VII. c. 7, s. 2.

5.—(1) Notwithstanding anything contained in *The Legislative Assembly Act* any of the powers and duties which have been heretofore or may be hereafter assigned by law to any Minister of the Crown may from time to time by Order-in-Council be assigned and transferred either for a limited period or otherwise to any other Minister by name or otherwise. Transfer of duties from one member of Council to another. Rev. Stat. c. 11.

(2) On request made to him by the Minister to whom any duties and powers have been assigned as herein provided, any other Minister may for a period not exceeding one week perform such duties and exercise such powers in place of the Minister making the request and in such case no Order-in-Council shall be required. Minister acting upon request.

(3) Where any such duties and powers are assigned to a Minister without Portfolio he shall not thereby become ineligible as a member of the Assembly or to sit or vote therein. 10 Edw. VII. c. 4, s. 3. Minister without portfolio may act.

6. No deed or contract in respect of any matter under the control or direction of a Minister shall be binding on His Majesty or be deemed to be the act of such Minister unless the same is signed by him or is approved by the Lieutenant-Governor in Council. 10 Edw. VII. c. 4, s. 4. Execution of contracts with Crown.

CHAPTER 14.

An Act respecting the Public Service of Ontario.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

SHORT TITLE.

Short title.

1. This Act may be cited as *The Ontario Public Service Act*. 3-4 Geo. V. c. 3, s. 1.

INTERPRETATION.

Interpretation.

"Civil servant."

"Department."

"Minister."

"Public service."

2. In this Act,

- (a) "Civil Servant" shall mean an officer, clerk or servant employed in a department;
- (b) "Department" shall mean a department, branch office or service in the civil service at the seat of Government at Toronto;
- (c) "Minister" shall mean the Member of the Executive Council for the time being presiding over a department or charged with administration of any Act or regulation respecting an office in the Public Service;
- (d) "Public Service" shall include every department and every office, clerkship or service at the nomination of the Crown, as representing the Province of Ontario, wherever held or performed.

3-4 Geo. V. c. 3, s. 2.

Application of Act to officers, etc., of Assembly.

3. Saving always the legal rights and privileges of the Assembly as respects the appointment or removal of its officers, clerks or servants, this Act shall apply to the permanent officers, clerks and servants of the Assembly, and for the purposes hereof such officers, clerks and servants shall constitute a department. 3-4 Geo. V. c. 3, s. 3.

Application to offices at Osgoode Hall.

4.—(1) For the purposes of this Act, the offices of the Courts, and the offices of the Master of Titles, Surrogate Clerk, and of the Inspector of Legal Offices and the Stamp Office at Osgoode Hall, shall be deemed to be a department, and shall be presided over by the Attorney-General of Ontario, and the person having for the time being the conduct of the business of any such office shall have and perform with

respect thereto the powers and duties under this Act of a deputy head of a department.

(2) Nothing herein shall impair or interfere with the authority or control of the courts and judges over their officers. ^{Saving as to authority of courts.} 3-4 Geo. V. c. 3, s. 4.

DISQUALIFICATION.

5. A member of the Parliament of Canada shall not be appointed to or hold any permanent office or employment in the service of the Government of Ontario at the nomination of the Crown, to which a salary or other emolument in lieu of salary is attached, but this shall not apply to the offices of justice of the peace, coroner or notary public or to any like office. ^{Members of Dominion Parliament not to hold permanent office at salary.} 3-4 Geo. V. c. 3, s. 5.

APPOINTMENTS, DIRECTION AND CONTROL.

6. The Lieutenant-Governor in Council upon the recommendation of the Minister may appoint such officers, clerks and servants in any department as may be deemed requisite or as may be provided for by statute or by any regulation made thereunder. ^{Appointments by Lieutenant-Governor in Council.} 3-4 Geo. V. c. 3, s. 6.

7.—(1) The Lieutenant-Governor in Council may make regulations, ^{Regulations.}

- (a) For the classification of the civil servants in any department and prescribing the duties to be performed by them; ^{Classification.}
- (b) For fixing the maximum and minimum salary or other remuneration to be paid to civil servants in any department; ^{Salary.}
- (c) For determining the qualifications, knowledge, skill or experience to be required before appointment to any office, clerkship or service in a department; ^{Qualifications.}
- (d) For fixing the hours of service in any department; ^{Hours.}
- (e) For regulating the conduct of civil servants and for imposing penalties by fine, suspension or otherwise for breach of such regulations, or for any misconduct or negligence on the part of civil servants. ^{Conduct.}

(2) Every regulation made under this section shall be laid before the Assembly forthwith, if the Assembly is then in session, and if the Assembly is not then in session, within one week after the commencement of the next session. ^{To be laid before Assembly.} 3-4 Geo. V. c. 3, s. 7.

8. Upon the report of the Minister that it is necessary that an officer, clerk or servant shall be permanently employed in a department, but that no salary or other remuneration ^{Appointment where no salary voted.}

has been voted by the Assembly for that purpose, the Lieutenant-Governor in Council may make the appointment and may fix the salary or remuneration to be paid and the same shall be payable out of the Consolidated Revenue Fund until the end of the then next Session of this Legislature. 3-4 Geo. V. c. 3, s. 8.

TEMPORARY CLERKS.

When temporary clerks to be appointed.

9.—(1) Whenever owing to the increase of business in any department, or to any additional work having been authorized by the Lieutenant-Governor in Council to be performed in a department, or by any person specially appointed for that purpose, it is deemed necessary that an officer, clerk or servant shall be employed temporarily in a department, the Minister may make such appointment and every officer, clerk or servant so appointed shall receive such remuneration as may be fixed by Order in Council and such remuneration may be paid out of the moneys voted for the contingencies of the department or out of any moneys appropriated by this Legislature for the work or service.

Term of appointment.

(2) An appointment under this section shall not be made for a longer period than three months, and at the expiration of that period may be renewed for a further term not exceeding three months and thereafter from time to time for a like period as the Minister may direct. 3-4 Geo. V. c. 3, s. 9.

DEPUTY HEADS OF DEPARTMENTS.

Who to be deputy heads.

10.—(1) The following officers shall be respectively the deputy heads of the departments to which they are attached:

The Deputy Attorney-General.
 The Deputy Minister of Education.
 The Deputy Minister of Lands and Forests.
 The Deputy Minister of Mines.
 The Assistant Provincial Secretary.
 The Deputy Minister of Public Works.
 The Deputy Minister of Agriculture.
 The Provincial Auditor.
 The Assistant Treasurer.
 The Clerk of the Executive Council.
 The Clerk of the Assembly.
 The Superintendent of Insurance.
 The Registrar of Loan Corporations.
 The Chief Clerk of the office of the President of the Council.

Temporary absence or vacancy.

(2) Where the deputy head of a department is absent or there is a vacancy in the office, the powers and duties of the deputy head shall be exercised and performed by such officer or clerk in the department as may be designated by the Minister.

(3) The deputy head of a department shall have the ^{Powers and duties.} general control of his department and shall have such other powers and perform such duties as may be assigned to him by the Lieutenant-Governor in Council and shall oversee and direct the other officers, clerks and servants of the department and in the absence of the Minister and during such absence may suspend from employment any such officer, clerk or servant who refuses or neglects to obey his directions as such deputy. 3 & 4 Geo. V. c. 3, s. 10.

11. No allowance or compensation shall be made for any ^{No compensation for extra services.} extra service whatsoever which any civil servant or any officer, clerk or servant employed in the public service may be required to perform in the department to which he belongs, but nothing herein shall prevent the payment of remuneration for special services in addition to his ordinary duties rendered or performed by any civil servant or any officer, clerk or servant employed in the public service by the written direction or at the written request of the Minister. 3-4 Geo. V. c. 3, s. 11.

12. Nothing in this Act shall affect any salary or emolument granted or fixed by any statute. 3-4 Geo. V. c. 3, s. 12. ^{Statutory salaries not affected.}

13. Whenever the staff of any department cannot adequately perform the duties required in an emergency, the deputy head of the department may require from the deputy head of any other department the temporary service of any clerk or servant who is not then actively engaged in his own department, but no additional remuneration shall be paid therefor. 3-4 Geo. V. c. 3, s. 13. ^{Aid of clerks from other departments.}

14. Every Minister shall furnish to the Lieutenant-Governor in Council at such times as he may direct, reports ^{Ministers to report as to clerks.} upon the conduct and efficiency of the civil servants employed in his department. 3-4 Geo. V. c. 3, s. 14.

ATTACHMENT OF SALARIES OF CIVIL SERVANTS.

15.—(1) Where a debt or money demand, not being ^{Creditor may garnish money owing by Crown to civil servant.} strictly a claim for damages, is due and owing to any person from a civil servant, either on a judgment or otherwise, and a debt is due and owing from the Crown, to such civil servant the person to whom the first mentioned debt or money demand is so due and owing (hereinafter designated the creditor) may recover in the manner herein provided any debt due or owing to the civil servant from the Crown, or sufficient thereof to satisfy the claim of the creditor, subject always to the rights of other parties to the debt owing from the Crown.

(2) The creditor may serve a notice personally on the ^{Notice to Treasurer.} Treasurer or on the Assistant Treasurer, or on some other

Effect of
notice.

officer appointed by the Treasurer to receive the same, specifying the nature of the claim, and shewing the name and residence of the civil servant and the nature of his occupation; and the service of such notice upon the Treasurer, Assistant Treasurer or other officer shall have the effect, subject to the rights of other persons, of attaching and binding in the hands of the Treasurer all debts then owing from the Crown to the civil servant, or sufficient thereof to satisfy the claim of the creditor, to the same extent as a garnishing or attaching order issued by or from a court of law.

Treasurer
to retain
money due.

(3) After service of the notice the Treasurer shall, when the creditor's claim is a judgment, retain all moneys then owing from the Crown to the civil servant, or sufficient thereof to satisfy the judgment, and a payment into Court or to the creditor, or where an execution is in the hands of a sheriff or bailiff, to the sheriff or bailiff, of the amount due to the civil servant, or of the amount due and costs unsatisfied on the judgment, shall be a discharge to that extent of the debt owing from the Crown to the employee.

Dispute
notice.

(4) Where judgment has not been recovered for the claim, the creditor, besides serving the notice provided by subsection 2, shall also serve a copy of such notice on the civil servant, together with a memorandum requiring the civil servant if he disputes the claim to file a disputing note with the Treasurer within ten days from the date of service.

Where no
dispute
notice
filed.

(5) If no disputing note is filed, the Treasurer, on being satisfied that notice has been served on the civil servant, shall retain any moneys due and owing to such civil servant and pay the same or a sufficient part thereof to satisfy the creditor's claim, subject to the provisions of subsection 8.

Where
dispute
note filed.

(6) If a note disputing the claim is filed, the Treasurer may with the consent of all parties determine whether any and what sum is due by the civil servant to the creditor upon the claim, or he may require the creditor to bring an action therefor against the civil servant, and in such case he shall retain any moneys due and owing to the civil servant or sufficient thereof to pay any claim and costs which may be recovered in the action to abide the result of the action provided such action is promptly prosecuted to judgment.

Treasurer
to keep
attachment
book.

(7) There shall be kept in the Treasury Department an attachment book, in which shall be entered the names of parties, the dates of service of notices, the statement of claim, and the amount, if any, due and owing to the civil servant at the time of service.

Limit of
application
of section.

(8) This section shall not apply to any debt contracted before the 17th day of January, 1898, nor where the amount due to the civil servant does not exceed \$25, nor if such amount exceeds \$25 beyond the amount of such excess, nor to any debt not contracted for board or lodging which does not exceed \$25.

(9) Nothing in this section shall authorize the bringing or maintaining of a suit against the Crown or the Treasurer without the fiat of the Attorney-General first had and obtained in accordance with the present practice. 3-4 Geo. V. c. 3, s. 15.

OATHS OF OFFICE.

16.—(1) Every civil servant shall, before entering upon the duties of his office, take and subscribe before the Clerk of the Executive Council the Oath of Allegiance and a Solemn Declaration in the following form:

"I (A.B.) solemnly and sincerely declare that I will faithfully and honestly fulfil the duties which devolve upon me as and that I will not ask or receive any money, service or recompense, or matter, or thing whatsoever, directly or indirectly, in return for what I shall have done or may do in the discharge of any of the duties of my said office, except my salary or what may be allowed me by law or by an Order of the Lieutenant-Governor in Council."

(2) The Clerk of the Executive Council shall keep a register of such oaths. 3-4 Geo. V. c. 3, s. 16.

LEAVE OF ABSENCE.

17.—(1) A Minister may grant to any civil servant employed in his department, or to any officer, clerk or servant employed in the public service under his direction or control, leave of absence for recreation for any period not exceeding three weeks in any one year, or on account of sickness or other pressing necessity for any period not exceeding two months in any one year.

(2) The Lieutenant-Governor in Council may grant to any civil servant or to any officer, clerk or servant employed in the public service of Ontario, leave of absence for a period not exceeding one year, with or without salary, for such cause and upon such terms as may be deemed proper and as shall be set out in the Order in Council granting such leave.

(3) The salary of any person during leave of absence may be paid to him in advance at the time of granting such leave, or at such times as the Minister, or the Lieutenant-Governor in Council, may direct. 3-4 Geo. V. c. 3, s. 17.

GRATUITIES.

18.—(1) Where the services of a civil servant or of any officer, clerk or servant in the public service are dispensed with on account of age, ill-health or infirmity, or in consequence of a change in the department, or changes in, or the abolition of, any office, clerkship or service in which he has been employed in the public service or from any cause other than misconduct or improper behaviour on his part, or

where a civil servant or any such officer, clerk or servant dies, there may be paid to him, or to his personal representatives, or to any member of his family, upon the order of the Lieutenant-Governor in Council, a sum not exceeding one month's pay for each year of his service.

(2) This section shall not apply to any person appointed after the 1st day of January, 1898. 3-4 Geo. V. c. 3, s. 18.

SALARIES AND INCREASES.

Salaries
and
Increases.

19.—(1) Where the salary or other remuneration or an increase in the salary or other remuneration attached to any office, clerkship or service is voted by the Assembly in the Estimates or Supplementary Estimates for any financial year, whether the appropriation therefor is made by this Legislature before the commencement of, or during the financial year for which the appropriation is made, and notwithstanding that the officer, clerk or servant was appointed after the commencement of the financial year for which the salary or other remuneration or increase was voted, unless it is otherwise expressly stated in the Estimates or Supplementary Estimates, or directed by the Lieutenant-Governor in Council, any appointment to such office, clerkship or service shall take effect as from the commencement of the financial year in which the same is made, and such salary, or other remuneration, or such increase, shall take effect and shall be payable as from the commencement of the financial year for which the same is voted, and the portion of such salary or other remuneration or of such increase which has accrued before the date of the passing of the Act making the appropriation shall be payable at that date. 3-4 Geo. V. c. 3, s. 19, *part*.

When to
take effect.

SAVING AS TO OTHER ACTS.

Act sub-
ject to
other
provisions.

20. This Act shall be subject to the provisions of any other Act relating to any department or public office under the Government. 3-4 Geo. V. c. 3, s. 20.

CHAPTER 15.

An Act respecting Public Officers.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Public Officers Act*. Short title.
9 Edw. VII. c. 5, s. 1.

2. No person shall be employed in any public office in Ontario who is not a British subject by birth or naturalization, but nothing in this section shall prevent the employment of any person for a temporary purpose by the Government of Ontario or by any Commission acting for or on behalf of the Crown, when in the opinion of the Government or of such Commission such employment is in the public interest. 9 Edw. VII. c. 5, s. 2.

Public officer to be British subject.
Proviso.

COMMISSIONS ON DEMISE OF THE CROWN.

3.—(1) It shall not be necessary, upon the demise of the Crown, to renew any commission, by virtue whereof any public officer or functionary in Ontario held his office or profession, during the previous reign, but a proclamation shall be issued by the Lieutenant-Governor, authorizing all persons in office who held commissions under the late Sovereign and all functionaries who exercised any profession by virtue of any such commissions, to continue in the due exercise of their respective duties, functions and professions, and such proclamation shall suffice, and the incumbents shall, as soon thereafter as may be, take the usual and customary oath of allegiance before the proper officer or officers thereunto appointed.

Commissions continued on demise of the Crown.

(2) The proclamation having been issued and oath taken, every public officer and functionary shall continue in the lawful exercise of the duties and functions of his office or profession, as fully as if appointed *de novo* by commission derived from the Sovereign for the time being; and all acts and things *bona fide* done and performed by such incumbents in their respective offices, and in the due and faithful performance of their duties and functions, between the time of the demise and the proclamation so to be issued, the oath of allegiance being always duly taken, shall be deemed to be legally done and valid accordingly. 9 Edw. VII. c. 5, s. 3.

Continuance in duty and validity of acts.

Saving as to rights of the Crown.

4. Nothing in the next preceding section shall prejudice or in anywise affect the rights or prerogatives of the Crown with respect to any office or appointment derived or held by authority from the Crown, nor prejudice or affect the rights or prerogatives thereof in any other respect whatsoever. 9 Edw. VII. c. 5, s. 4.

OATHS OF ALLEGIANCE AND OFFICE, ETC.

What oath necessary.

Allegiance.

5. It shall not be necessary for any person appointed to any office in Ontario, or for any Mayor or other officer or member of any corporation therein, or for any person admitted, called or received as a Barrister, Notary Public, or Solicitor, to make any declaration or subscription, or to take or subscribe any other oath than the oath following, that is to say:—

Form.

“I, A. B., do sincerely promise and swear, that I will be faithful and bear true allegiance to His Majesty King George the Fifth, (or the reigning Sovereign for the time being,) as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, and that I will defend Him to the utmost of my power against all traitorous conspiracies or attempts whatever which may be made against His Person, Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to His Majesty, His Heirs or Successors, all treasons or traitorous conspiracies and attempts which I may know to be against Him or any of them;—And all this I do swear without any equivocation, mental evasion or secret reservation: So help me God.”

Oath of office.

and also such oath for the faithful performance of the duties of his office or for the due exercise of his profession or calling as may be required by any law in that behalf. 9 Edw. VII. c. 5, s. 5.

The said form of oath of allegiance and no other to be used in all cases.

6. Except where otherwise specially provided, the form hereinbefore set forth, and no other, shall be that of the oath of allegiance to be administered to and taken by every person in Ontario, who, either of his own accord or in compliance with any lawful requirement made on him or in obedience to the directions of any statute of this Legislature, desires to take an oath of allegiance. 9 Edw. VII. c. 5, s. 6.

Who may administer oath of allegiance.

7. All Magistrates and all other officers lawfully authorized, either by virtue of their office or by special commission from the Crown for that purpose, may administer the oath of allegiance in any part of Ontario. 9 Edw. VII. c. 5, s. 7.

SECURITY BY PUBLIC OFFICERS.

Persons appointed to certain public offices to give security.

8.—(1) Security by or on behalf of every person appointed to any office or employment, or commission in the public service of Ontario, or to any office or employment of public trust, or wherein he is concerned in the collection, receipt, disbursement or expenditure of any public money under the

Government of Ontario, and who by reason thereof is required to give security, shall be furnished within one month after notice of his appointment, if he is then in Ontario, or within three months, if he is then absent from Ontario (unless he sooner arrives in Ontario, and then within one month after such arrival), in such sum and in such manner as may be approved of by the Lieutenant-Governor in Council or by the principal officer or person in the office or department to which he is appointed, for the due performance of the trust reposed in him and for his duly accounting for all public moneys entrusted to him or placed under his control.

(2) Where a deputy is appointed by any person holding an office, any security required by law and hereafter given on behalf of such person, shall extend to and include the acts and omissions of the deputy, whether appointed before or subsequent to the giving of the security.

Liability of sureties of public officer for acts of deputy.

(3) The liability of the sureties, and of the officer appointing the deputy, shall be the same as regards the performance of the duties of the office by the deputy, as in regard to the performance thereof by the person holding the office; and such liability shall extend to and cover all acts and omissions of the deputy while he continues to perform the duties of the office, and whether before or after the death or resignation of the person appointing him, subject to the same rights of withdrawal by the sureties from liability, as may exist in regard to the security given by public officers.

Security to cover acts and omissions of deputy.

(4) The Lieutenant-Governor in Council may, notwithstanding the provisions of this section, require new security to be furnished by any deputy on the death or resignation of the person holding the office wherein he is deputy, and such security shall be for the like amount, and subject to the same conditions as that required by law for the due performance of the duties of the officer whom the deputy represents. 9 Edw. VII. c. 5, s. 8.

Deputy may be required to furnish security.

9. The Lieutenant-Governor in Council may prescribe the form of the security required to be furnished under any Statute by a public officer or by any class of public officers, and may authorize the Treasurer of Ontario to enter into agreements in His Majesty's name with any corporation authorized to carry on the business of fidelity insurance in Ontario for the furnishing of security for any public officer, or for public officers generally, or for any class or classes of public officers. 9 Edw. VII. c. 5, s. 9.

Regulations as to form of security.

10. Nothing in the preceding sections shall apply to any treasurer or other officer of a municipal or school corporation having the custody of moneys of such corporation. 9 Edw. VII. c. 5, s. 10.

Saving as to municipal or school treasurers.

Laying
statement
of securities
before
Assembly.

11. The Treasurer of Ontario shall cause to be prepared and laid before the Assembly, within fifteen days after the opening of every Session thereof, a detailed statement of all securities furnished on behalf of public officers, and of any changes that have been made in reference to such securities since the last statement laid before the Assembly. 9 Edw. VII. c. 5, s. 11.

Effect of
securities by
public officers.

12. The security hereafter furnished on behalf of any public officer in pursuance of this or any other Act requiring security shall enure as well for the benefit of His Majesty as for that of the persons for whose benefit it is provided by the Act requiring the security or otherwise that it shall enure. 9 Edw. VII. c. 5, s. 12.

Limitation
of actions
against
sureties of
public officers.

13. Where any person, company or corporation is surety for a public officer, or for any person appointed to any office, employment or commission in the public service of Ontario, or to any office or employment of public trust, whether the suretyship is for the benefit of His Majesty or enures for the benefit of any person injured by the default or misconduct of the officer or other person, and an action is brought against the surety, no damages shall be recovered except as to matters and causes of action which have arisen within ten years next before the commencement of the action. 9 Edw. VII. c. 5, s. 13.

DUTIES OF INSPECTORS.

Duties of one
inspector may
be discharged
by another.

14.--(1) The Attorney-General may direct any Inspector to discharge the duties which are by statute or otherwise imposed upon or may be performed by any other Inspector, and an Inspector while acting under such direction shall have all the powers of the Inspector whose duty he has been directed to perform.

Inspector
defined.

(2) In this section the word "Inspector" shall include the Inspector of Legal Offices, the Inspector of Registry Offices, the Inspector of Land Titles Offices, the Inspector of Prisons and Public Charities, and the Inspector of Division Courts. 9 Edw. VII. c. 5, s. 14.

RETURNS OF FEES.

County court
and division
court clerks
and registrars
of surrogate
court.

15. Every clerk of a county court, every registrar of a surrogate court and every clerk of a division court for a division embracing a city or part of a city, shall keep a separate book, in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, shewing the sums received by him for fees, charges and emoluments of all kinds whatsoever, and shall on or before the 15th day of January in each year make up a statement under oath of such fees, charges and emoluments to and including the 31st day of December of the previous year and

return the same to the Provincial Secretary. 9 Edw. VII. c. 5, s. 15.

16. Every public officer who is by this or any other Act required to make a return of the fees and emoluments of his office to any department of the Government, or to any officer, shall include in his return the following particulars, Particulars in returns by public officers.

- (a) The aggregate amount of all fees and emoluments earned by him during the preceding year by virtue of his office;
- (b) The aggregate amount of all fees and emoluments actually received by him during the preceding year by virtue of his office;
- (c) The actual amount of the disbursements during the same period in connection with his office, and such other particulars as the Lieutenant-Governor in Council may prescribe. 9 Edw. VII. c. 5, s. 16.

GENERAL.

17. Where a person who has been, but has ceased to be, a public officer, retains possession of any accounts, moneys, books, papers, matters or things which have been in his possession as such officer, a Judge of the High Court Division or the Judge of any county or district court, upon application of the successor in the office of such person or of the Attorney-General or of some person by his authority, and on notice to the person affected, may order that such accounts, moneys, books, papers, matters and things be forthwith delivered to such successor in office or to such person as the Judge may direct, and in default that such person be committed to the common gaol of the county or district in which he resides for such period as the Judge may direct, or until he complies with the directions of the order, and may authorize the sheriff of any county or district in which the same may be found to forthwith seize and take such accounts, moneys, books, papers, matters and things, and deliver the same to the persons to whom they have been directed to be delivered. 9 Edw. VII. c. 5, s. 17. Procedure against person, who has ceased to be a public officer, for retaining moneys, books, etc.

18. Wherever by any general or special Act of this Legislature any person or the occupant for the time being of any office is empowered to do or perform any act, matter or thing and such person or the occupant for the time being of such office is disqualified by interest from acting, and no other person is by law empowered to do or perform such act, matter or thing, then he or any interested person may apply, upon summary motion, to a Judge of the High Court Division in Chambers, who shall have power to appoint some disqualified person to do or perform the act, matter or thing in question. 10 Edw. VII. c. 26, s. 16. Procedure when public officer interested in question before him.

CHAPTER 16.

An Act respecting the Office of Sheriff.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title. **1.** This Act may be cited as *The Sheriffs' Act*. 9 Edw. VII. c. 6, s. 1.
- Appointment of Sheriffs. **2.** The Lieutenant-Governor in Council may, by a commission under the Great Seal, appoint a Sheriff for each County and District. 9 Edw. VII. c. 6, s. 2.
- Separate Sheriffs for York and City of Toronto. **3.—(1)** The Lieutenant-Governor in Council may, in like manner appoint one person to be Sheriff of the County of York, and another to be Sheriff of the City of Toronto.
- Lieutenant-Governor in Council may define duties. **(2)** Subject to the provisions of section 5 the Lieutenant-Governor in Council may define what duties with reference to Courts held jointly for the City and County, including any duties to be performed under *The Jurors' Act*, shall be performed by the Sheriffs of the City and County respectively.
- Rev. Stat. c. 64. **(3)** No act done by either of the said Sheriffs shall be held unlawful or invalid on the ground that the same should have been done by the other. 9 Edw. VII. c. 6, s. 3.
- Act of one Sheriff when not to be invalid. **4.** The Sheriff of the County of York shall have no jurisdiction within the City of Toronto, save as provided by this Act. 9 Edw. VII. c. 6, s. 4.
- Jurisdiction of Sheriff of York in City of Toronto. **5.—(1)** The Sheriff of the County of York shall perform the duties pertaining to the office of Sheriff with reference to the following courts held in the City of Toronto, that is to say, the Election Courts, the non-jury sittings of the High Court Division, the County Court of the County of York, the Court of General Sessions of the Peace, and the County Judges' Criminal Court.
- Division of duties, with reference to Courts—duties of Sheriff of York. **(2)** The Sheriff of the City of Toronto shall perform the duties pertaining to the office of Sheriff with reference to the Divisional Courts and to the jury sittings of the High Court Division in Toronto. 9 Edw. VII. c. 6, s. 5.
- Duties of Sheriff of Toronto. **6.** The Sheriff of the County of York in respect of the Courts assigned to him shall be entitled to all fees and allowances payable to Sheriffs in respect of services connected with
- Fees and allowance in respect of services connected with Courts.

such Courts, including the removal to the Penitentiary of any prisoners sentenced thereto by such Courts; and the Sheriff of the City of Toronto shall in like manner be entitled, in respect of the Courts assigned to him, to the like fees and allowances for services connected with such Courts. 9 Edw. VII. c. 6, s. 6.

7. So long as there is but one gaol for the City of Toronto and the County of York, the Sheriff of the City of Toronto shall have control of the gaol. 9 Edw. VII. c. 6, s. 7.

8. The Sheriff of the County of York shall be entitled to the fees and allowances payable to sheriffs for services relating to prisoners and lunatics committed from the County of York outside the City of Toronto who may be confined in such gaol, or relating to any returns required to be made to the Inspector of Prisons and Public Charities in respect of any such prisoners or lunatics. 9 Edw. VII. c. 6, s. 8.

9. The Sheriff of the City of Toronto shall be entitled to the fees and allowances payable to sheriffs for services relating to the custody and control of the gaol, and of any city prisoners and lunatics confined therein, and relating to any returns required to be made in respect of such gaol, or of any city prisoners or lunatics confined therein. 9 Edw. VII. c. 6, s. 9.

10.—(1) When any part of the County of York is annexed to the City of Toronto, the Sheriff of the County of York shall forthwith transmit to the Sheriff of the City of Toronto a list of all writs of execution then in his hands not theretofore so transmitted, and shall in like manner transmit to the Sheriff of the City of Toronto notice of the renewal of any such writ and of any subsequent or supplemental writ in the same cause or matter.

(2) If the Sheriff of the City of Toronto, upon search being made in his office for executions against the property of any person, finds that there is no such execution, but that the name of such person is included in any list so transmitted to him by the Sheriff of the County of York, he shall, upon request and without charge give a certificate stating that fact and that there is no such execution in his office. 9 Edw. VII. c. 6, s. 10.

11. Every Sheriff, before he enters upon the duties of his office, shall take and subscribe the oath of allegiance prescribed by *The Public Officers' Act*, and also the oath of office, Form 1, and shall not be required to take any other oath, except as hereinafter provided; and every such oath shall be filed in the office of the Clerk of the Peace. 9 Edw. VII. c. 6, s. 11.

12.—(1) The Lieutenant-Governor in Council may fix and determine the amount of the security to be furnished on

behalf of every Sheriff, but such amount shall not in any case be less than \$3,000.

How
furnished.
Rev. Stat.
c. 15.

(2) The security shall be furnished in accordance with the provisions of *The Public Officers' Act* and of any Order in Council made under the authority thereof, and within one month after the appointment of the Sheriff and before he is sworn into office.

Revocation of
appointment
on failure to
furnish.

(3) In case the security is not furnished within the said period, or within such further period as the Lieutenant-Governor in Council may prescribe, the Lieutenant-Governor in Council may revoke the appointment of the Sheriff, and his appointment and commission shall be void from and after the date of such revocation.

Changes in
boundaries of
bailiwick not
to affect
security.

(4) The security shall not be affected, nor shall the surety be released wholly or in part from the obligation assumed by reason of any change by legislative authority or otherwise in the boundaries of the county, city or district for which the Sheriff was appointed, or by reason of any change in his duties.

Right to ex-
amine security.

(5) Any person may examine the security furnished on behalf of a Sheriff, and shall be entitled to take a copy thereof.

Action against
surety.

(6) His Majesty, or any person sustaining damage by reason of the default or misconduct of a Sheriff, in addition to any right of action against the Sheriff, may bring and maintain an action against the surety alone, and the action shall not be barred by reason of a prior recovery by the same person upon the same security or by reason of a judgment rendered for the defendant in a prior action upon the same security or by reason of any other action being then pending upon the security at the suit of the same plaintiff or any other person for any other distinct cause of action; provided that if the plaintiff has recovered damages in an action against the Sheriff for any such default or misconduct and the amount recovered or any part thereof has been paid to the plaintiff, no action shall lie against the surety for the same cause, except for any amount so recovered and remaining unpaid.

Proviso.

Judgment for
balance of
amount of
security where
surety has
already been
held liable.

(7) If upon the trial of an action brought against a surety it appears that the plaintiff is entitled to recover, and that the amount which the surety has paid or has become liable to pay under a judgment recovered against him is not equal to the full amount of the security, the Court, after deducting from the full amount the sum which the surety has paid or become liable to pay as aforesaid, shall render judgment against the surety for any sum not exceeding the balance of the sum for which he became surety.

Discharge of
surety on pay-
ment of full
amount.

(8) If the surety has actually and *bona fide* paid out of his own moneys or effects, or has become liable by virtue of a judgment recovered upon the security to pay an amount equal

to the amount specified therein the security shall be deemed to be discharged and satisfied, and no other or further sum shall be recovered thereunder.

(9) The Court in which an action on the security is pending, upon proof of such payment or liability, and at any stage of the action, may in a summary manner prevent the recovery against the surety of any further sum than that specified in the security. Staying of further proceedings against surety.

(10) The security shall extend to the acts and omissions of the deputy of the Sheriff, and, in case of a vacancy in the office of Sheriff by death, resignation or otherwise, the security shall continue and be enforceable with respect to any act or omission of the Deputy Sheriff or of a Sheriff *pro tempore* acting in pursuance of the provisions of this Act or of any Deputy Sheriff appointed by such Sheriff *pro tempore*, in pursuance of the provisions of this Act. 9 Edw. VII. c. 6, s. 12. Security to extend to acts, or omissions of deputy or Sheriff pro temp.

13. A Sheriff or Deputy Sheriff shall not, directly or indirectly, keep a shop, or trade or traffic in goods, wares, or merchandise, either by wholesale or retail. 9 Edw. VII. c. 6, s. 13. Sheriff, etc., not to trade.

14. A Sheriff, Deputy Sheriff, Coroner, Elisor, Bailiff or Constable shall not, directly or indirectly, purchase any goods or chattels, lands or tenements by him exposed to sale under legal process. 9 Edw. VII. c. 6, s. 14. Sheriff, etc., not to purchase at sales under execution.

15. Every Coroner, Elisor, Bailiff or Constable entrusted with the execution of any writ, warrant or process who wilfully misconducts himself in the execution of the same, or wilfully makes any false return to such writ, warrant or process, unless by the consent of the party in whose favour the same may have issued, shall incur a penalty not exceeding \$200, recoverable upon summary conviction, and shall be liable to imprisonment for a period not exceeding six months, and shall answer in damages to any person aggrieved by such misconduct or false return. 9 Edw. VII. c. 6, s. 15. Misconduct of Coroner, Elisor, Bailiff or Constable. Damages.

16. If a debtor in execution escapes out of legal custody the Sheriff, Bailiff, or other person having the custody of such debtor, shall be liable only to an action for the damages sustained by the person at whose suit the debtor was taken or imprisoned, and shall not be liable to any other action in consequence of his escape. 9 Edw. VII. c. 6, s. 16. Liability of Sheriff, etc., for escape.

17. A Sheriff who wilfully makes any false return to any process directed to him and placed in his hands for execution, unless by consent of both parties to the same, shall be liable to forfeit his office. 9 Edw. VII. c. 6, s. 17. Forfeiture of office for false return.

Action against
Sheriff where
Jury required.

18. Where an action is brought against a Sheriff and a party thereto requires it to be tried by a Jury the trial shall take place in such county or district as the Court or a Judge may direct. 9 Edw. VII. c. 6, s. 18.

Endorsement
of receipt of
process; non-
service; re-
delivery to
plaintiff; costs
of service.

19. Upon the delivery of a writ of summons at the office of a Sheriff, to be served by him, he, or his Deputy or Clerk, shall endorse thereon the time when it was so delivered; and in case the writ is not fully and completely served within ten days after the delivery, the plaintiff shall be entitled to receive back the same; and the Sheriff, Deputy Sheriff or Clerk shall endorse thereon the time of the delivery back; and the cost of the mileage and service of the writ by a literate person afterwards, if the person to be served was at any time during the ten days within the county or district, shall be allowed in the taxation of costs, as if the service had been by the Sheriff or his officer. 9 Edw. VII. c. 6, s. 19.

Failure by
Sheriff to re-
deliver.

20. If the Sheriff, being applied to, does not return the writ, after the expiration of the ten days, the plaintiff may issue a duplicate or concurrent writ on the *præcipe* already filed, and the costs of the first or other writ not returned may be charged against and recovered from the Sheriff by the plaintiff. 9 Edw. VII. c. 6, s. 20.

Certificate as
to executions.

21.—(1) Where, for the purpose of investigating or establishing some title to land, a certificate respecting executions against lands is required from a Sheriff, the Sheriff if so requested, shall include in one certificate any number of names in respect of which the certificate may be required in the same matter or investigation.

Sheriff to
include cer-
tificates under
Rev. Stat.
c. 81.

(2) The Sheriff shall, in such certificate, include all certificates of proof of claims under *The Creditors Relief Act* which may be in his hands affecting lands.

Fees.

(3) The maximum fees payable to a Sheriff in respect to such certificate shall be \$4. 9 Edw. VII. c. 6, s. 21

Office hours of
Sheriffs.

22. Subject to Rules of Court the Sheriff shall, except upon legal holidays and during the Long Vacation, keep his office open every day from 10 o'clock in the forenoon until 4 o'clock in the afternoon, and during all that time he or his deputy or some competent person shall be present to transact the business of the office; and during the Long Vacation the Sheriff or his deputy or clerk shall be present in his office on every day, legal holidays excepted, from 10 o'clock in the forenoon until 1 o'clock in the afternoon. Provided that the Sheriffs of the City of Toronto and of the Counties of Carleton and York, or their respective deputies or clerks, shall only be required to be present in their offices, for the transaction of business on every Saturday, not being a holiday, from 10 o'clock in the forenoon until 1 o'clock in the afternoon, and provided also

In Long
Vacation.

Proviso as to
Toronto and
York.

that when the office of a Sheriff may be closed under this section at 1 o'clock in the afternoon, the Sheriff or his deputy shall nevertheless, upon application made to him, transact all necessary and urgent business of his office in the same manner and to the same extent as on days upon which the office is required to be kept open until 4 o'clock. 9 Edw. VII. c. 6, s. 22.

Urgent business.

23. No sheriff, deputy sheriff or other officer shall sell or expose for sale under execution any lands or tenements in the District of Manitoulin, or any lands or tenements in the District of Rainy River, which are situate more than 20 miles from a line of railway, except during the months of July, August, September or October. 3-4 Geo. V. c. 18, s. 8 (1).

Sales under execution of lands in Manitoulin and Rainy River.

24. The Sheriff shall keep in his office the following books:

Certain books to be kept in Sheriff's office.
Process Books.

(a) Process Books—in which shall be entered a memorandum of every process other than writs of execution, or writs in the nature of writs of execution, received by him, the Court out of which the same issued, the date of the receipt, the nature of the process, the names of the parties thereto, the solicitor by whom issued, what was done thereunder or therewith and the date and the nature of the return made thereto;

(b) Execution Books—in which shall be entered a memorandum of every writ of execution, or writ in the nature of a writ of execution received by him, the Court out of which the same issued, the date of the receipt, the nature of the process, the names of the parties thereto, the solicitor by whom issued, what was done thereunder or therewith and the date and the nature of the return made thereto, or what was done thereunder or therewith;

Execution Books.

(c) A Cash Book—in which shall be entered all moneys received or paid by the Sheriff in his official capacity, or in connection with his office, for any service whatever, for fees, poundage, service of process and papers, attendance at Courts, moneys levied or collected under execution, or under writs in the nature of writs of execution or otherwise, the date of the receipt or payment and the cause, matter or service in, or on account of which the same was received or paid;

Cash Book

(d) A separate book, in which shall be entered from day to day all fees and emoluments received by him, by virtue of his office, and the several amounts disbursed by him, in carrying on the work of his office;

Sheriff to keep an account of his fees.

Other books.

(e) Such other books as the Lieutenant-Governor in Council may require. 9 Edw. VII. c. 6, s. 23.

Return of fees
to Inspector of
Legal Offices.

25. The Sheriff shall, on or before the 15th day of January in every year, make, to the Inspector of Legal Offices, a return, under oath, of the aggregate amount of the fees and emoluments received by him, and of his disbursements, during the previous year, up to and inclusive of the 31st day of December. 9 Edw. VII. c. 6, s. 24.

Books to be
paid for by
county.

26. The Sheriff shall procure the books mentioned in section 24, and the cost thereof shall be paid by the city or county of which he is Sheriff. 9 Edw. VII. c. 6, s. 25.

Sheriff to
make quarterly
returns of fines,
etc.,

27. The Sheriff shall quarterly and within twenty days after the expiration of each quarterly period, transmit to the Treasurer of Ontario and to the Inspector of Legal Offices a just, true, and faithful account, verified upon oath, of all fines, penalties, and forfeitures which he has been required to levy and make by any lawful authority, and of the receipt and application of the same, or the reason why the same have not been received and applied; and he shall pay over to the proper officer or to the person lawfully entitled to receive the same, the several sums collected by him, within twenty days next after the period within which the same have been collected; and every Sheriff neglecting or refusing to transmit such quarterly account, or to pay over any money so collected by him, within the time hereby prescribed, shall incur the like penalty and may be sued for the same in the same manner, as is provided with regard to Justices of the Peace neglecting or refusing to make the returns required by Part II of *The Justices of the Peace Act*. 9 Edw. VII. c. 6, s. 26.

and pay over
moneys.

Penalty for
neglect.

Rev. Stat.
c. 87.

Duty of Sheriff
as regards
sittings of High
Court.

28. The Sheriff shall give his attendance upon the Judges for the maintenance of good order in His Majesty's Courts, and for the doing and executing of all other things to the office of Sheriff in such case appertaining. 9 Edw. VII. c. 6, s. 27.

SHERIFF TO APPOINT CONSTABLES AND CRIER.

Appointment
of Court Crier
and Constables

29. The Sheriff shall have the appointment and control of the Court crier and of the constables at the sittings of the High Court Division, the County Court, the Court of General Sessions of the Peace and other Courts at which the attendance of the Sheriff is required. 9 Edw. VII. c. 6, s. 28.

PAYMENT OF SHERIFFS' COSTS.

Fees of
Sheriff
when acting
under order of
Judge.

30. Where a Sheriff is directed by the Court to perform any service or do any act for which no fee is provided the Sheriff may be allowed such fee as the Court may think fit, and the same shall be payable as the Court may direct. 9 Edw. VII. c. 6, s. 29.

31. The Sheriff may at the time of the delivery demand from any person delivering a process or attachment to him to be executed, the fees allowed to him by the tariff for receiving the writ or order and for warrant and return, and a reasonable sum for mileage and the fees and mileage so paid shall, if afterwards collected from the debtor, be repaid by the Sheriff to the person who issued such process or attachment. 9 Edw. VII. c. 6, s. 30.

Demanding fees on executions in advance.

32.—(1) After the expiration of one month from the service of his bill of costs, fees and expenses against a solicitor, the Sheriff may serve the solicitor with a notice of an application to the Supreme Court or a Judge thereof, or to a Judge of a County or District Court, returnable not earlier than eight days from the day of service, for payment of the amount of the bill; and the amount claimed shall be stated in the notice.

Sheriffs before action for fees may serve notice of application to the Court for payment.

(2) On the return of the notice, the Court or Judge may, without reference, direct the payment to the Sheriff of the amount of his demand, or of any less amount, either without costs, or with costs to be fixed by an order or to be taxed; or the Court or Judge may order the bill and the demand thereon to be taxed by the proper officer, and may direct that the officer shall tax to the party entitled thereto his costs of the reference, and may also direct that the Sheriff and the solicitor shall respectively pay what may be found due to the other upon the conclusion of the reference and taxation; and the Court or Judge making the reference shall restrain the bringing of any action pending the reference; and in case the order of reference does not make provision in this behalf, the officer named in the order of reference may, in his discretion, having regard to the matters in dispute between the parties and occasioning the costs, tax the costs of the order and reference, or any part thereof, in favour of either party, or may disallow any part thereof.

Power of the Court or Judge and proceedings on return of the notice.

(3) At the expiration of eight days from the date of the order or of the certificate of the taxing officer, as the case may be, the party entitled to payment may sue out a writ of execution for the amount ordered or certified to be payable to him. 9 Edw. VII. c. 6, s. 31.

Execution for amount payable.

DEATH, ETC., OF SHERIFF.

33.—(1) If the Sheriff dies, or his resignation is accepted, or he is removed from office, the Deputy Sheriff shall continue the office of Sheriff and execute the same and all things appertaining thereto in the name of the Sheriff so dying, resigning or removed, until another Sheriff has been appointed and sworn into office; and the Deputy Sheriff shall be answerable for the execution of the office during such interval as the Sheriff would by law have been, if he had been living or had continued in office, and the security given to the Sheriff by the Deputy Sheriff, and his pledges, as well as the security

Deputy Sheriff to continue office of Sheriff in case of death or resignation.

Obligation of sureties in such cases.

furnished on behalf of the Sheriff, shall remain and be a security to His Majesty and to all persons whomsoever for the performance by the Deputy Sheriff of the duties of the office during such interval.

Where vacancies occur in office of Sheriff and there is no Deputy Crown Attorney to act.

(2) If there is no Deputy Sheriff, the Crown Attorney for the city, county or district, as the case may be, shall be the Sheriff *pro tempore* until another person is appointed Sheriff, and the Crown Attorney on becoming Sheriff *pro tempore* may appoint a Deputy Sheriff, and shall do and perform every other act, matter or thing necessary for the execution of the office.

Temporary officer to be responsible.

(3) During such interval the Sheriff *pro tempore* shall be answerable for the execution of the office, as the Sheriff would by law have been if he had been living or had continued in office, and any security given by or furnished on behalf of the Sheriff since the 16th day of April, 1895, or hereafter furnished on behalf of a Sheriff so afterwards dying, resigning or removed shall be a security to His Majesty, and to all persons whomsoever, for the performance of the duties of the office by the Sheriff *pro tempore* and his deputy. 9 Edw. VII. c. 6, s. 32.

All books, etc., to be the property of the Government.

34. All books, accounts, records, papers, writs, warrants, process, moneys and other matters and things in the possession or under the control of a Sheriff by virtue of, or appertaining to his office, shall be the property of His Majesty, and the same upon the death, resignation or removal from office of the Sheriff shall, by the person in whose possession or control they may happen to be or may come, be immediately handed over to and shall be taken possession of by the successor in office of the Sheriff, or such person as the Lieutenant-Governor in Council may appoint to receive the same. 9 Edw. VII. c. 6, s. 33.

No one but the succeeding Sheriff to hold books, etc., on pain of fine and imprisonment.

35. No person, except the successor in office of the Sheriff so dying, resigning or removed, or the person appointed by the Lieutenant-Governor in Council as aforesaid, shall take, have or hold such books, accounts, records, papers, writs, warrants, process, moneys, or other matters or things; and any person having or holding any of them shall forthwith on demand deliver over the same to the succeeding Sheriff, or to the person appointed as aforesaid; and, upon default the offender shall incur a penalty of not less than \$10, nor more than \$50, besides costs, for every day's default, recoverable on summary conviction and shall also be liable to imprisonment for a period not exceeding three months, unless the penalty and costs are sooner paid. 9 Edw. VII. c. 6, s. 34.

Penalty.

Proceedings on removal, etc., of Sheriff, duty of outgoing Sheriff.

36.—(1) Upon the removal of a Sheriff from office or upon his resignation and the appointment of his successor, the outgoing Sheriff, or, in the event of the death of a Sheriff, the Deputy Sheriff or Sheriff *pro tempore* shall forthwith make

out and deliver to the incoming Sheriff a true and correct list and account, under his hand, of all prisoners in his custody, and of all writs and process in his hands not wholly executed by him, with all such particulars as shall be necessary to explain to the incoming Sheriff the matters intended to be transferred to him, and shall thereupon hand over and transfer to the care and custody of the incoming Sheriff all such prisoners, writs and process, and all records, books and matters appertaining to the office of Sheriff.

(2) The incoming Sheriff shall thereupon sign and deliver ^{Duty of incoming Sheriff.} a duplicate of the list and account to the outgoing Sheriff, or to the Deputy Sheriff, or Sheriff *pro tempore*, to whom the same shall be a good and sufficient discharge for all the prisoners therein mentioned, and transferred to the incoming Sheriff, and from the further charge of the execution of the writs and process mentioned therein, without any writ of discharge or other writ whatsoever, and the incoming Sheriff shall thereupon stand and be fully and effectually charged with the prisoners, and with the execution and care of the writs and process mentioned in the list and account.

(3) If the outgoing Sheriff or the Deputy Sheriff or the Sheriff *pro tempore* refuses or neglects to make out, sign and deliver the list and account, and to hand over the writs and process in manner aforesaid, he shall be liable to any person aggrieved for the damages and costs sustained by such neglect or refusal. 9 Edw. VII. c. 6, s. 35. ^{Penalty.}

37. A Sheriff, after resigning or being removed or in case of the death of a Sheriff, his heirs, executors or administrators, shall, at all times, have the right, free of charge to have access to, and to search and examine into all accounts, books, papers, writs, warrants and process of whatever kind, and all other matters and things which were in his possession before his death, resignation or removal, and which, at the time of making or requiring to make such search or examination, are in the possession or control of the succeeding Sheriff, or the then Sheriff of the city, county or district. 9 Edw. VII. c. 6, s. 36. ^{Sheriffs resigning, etc., may examine and inspect books, etc.}

38. In case of the death, resignation or removal from office of a Sheriff, or of a Deputy Sheriff while there is no Sheriff, or of a Sheriff *pro tempore*, after he has made a sale of lands, but before he has made the deed of conveyance of the same to the purchaser, and whether the sale was under an execution or for arrears of taxes the deed of conveyance shall be made to the purchaser by the Sheriff, or by the Deputy Sheriff who is in office acting as Sheriff, or by the Sheriff *pro tempore*, at the time when the deed of conveyance is made. 9 Edw. VII. c. 6, s. 37. ^{Conveyances in case of death, etc., of Sheriff who has sold lands.}

39. In case of the death, resignation or removal from office of a Sheriff after action brought by him as Sheriff, the action may be continued in the name of his successor, to whom the ^{Continuation of actions after death, etc., of Sheriff.}

benefit of all securities given to the Sheriff in his official capacity shall enure. 9 Edw. VII. c. 6, s. 38.

Fees for attendance on non-jury sittings of County Court.

40. For attending the sittings of the County Court for trials without jury the following fees shall be payable,

- (a) To the Sheriff, \$5 per diem;
- (b) To the Crier, \$2 per diem;
- (c) To the constable, \$1.50 per diem,

and the same shall be chargeable and shall be paid out of the Consolidated Revenue Fund. 3-4 Geo. V. c. 18, s. 9.

Amount required to make up Sheriff's income to \$1,500.

41.—(1) Where it appears by a return to the Lieutenant-Governor or to any department of the Government that in any year a Sheriff not paid wholly or in part by salary, has derived from the fees and emoluments of his office, after deducting necessary disbursements, an income which does not exceed \$1,500, there may, on the report of the Inspector of Legal Offices be paid to such Sheriff out of the Consolidated Revenue Fund an amount sufficient to make up the income for the year to \$1,500, if the Lieutenant-Governor in Council so directs. 9 Edw. VII. c. 6, s. 39; 2 Geo. V. c. 17, s. 3; 3-4 Geo. V. c. 18, s. 8 (2).

Allowance for keep of horse.

(2) A sheriff may charge as a necessary disbursement such sum for the keep of a horse as the Inspector of Legal Offices certifies to be reasonable. 1 Geo. V. c. 17, s. 10.

Rev. Stat. c. 89.

As to Protection of Sheriff from damages for acts done by virtue of his office, see The Public Authorities Protection Act.

FORM 1.

OATH OF OFFICE.

I, A. B., of _____, in the County (or District) of _____, Esquire, having been appointed Sheriff of _____, swear that I will well, truly and faithfully perform and execute all the duties required of me by law, appertaining to the office of Sheriff, so long as I continue therein, and that I have not given or promised directly or indirectly, or authorized any person to give or promise any money, gratuity or reward whatsoever for procuring the said office for me.

Sworn before me at _____ of _____ the _____ day of _____, in the County of _____
C.D., 19____ }

A. B.

A Commissioner, etc.

9 Edw. VII. c. 6, Form I.

CHAPTER 17.

An Act respecting the Fees of certain Public Officers.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Public Officers Fees Act*. Short title.
10 Edw. VII. c. 5, s. 1.

2. In this Act “net income” shall mean the excess of all fees and emoluments, including receipts in the current year, interpretation of “net income.” whether on account of the earnings and salary of such year or of any former year, by an officer by virtue of all his offices, after deducting the disbursements incident to the business of the office or offices held by him. 10 Edw. VII. c. 5, s. 2.

CROWN ATTORNEYS, AND CLERKS OF THE PEACE.

3.—(1) Every Crown Attorney, whether he is or is not Clerk of the Peace, and every Clerk of the Peace, shall be Crown Attorneys and Clerks of the Peace. entitled to retain to his own use in each year his net income up to \$2,000.

(2) Of the net income of each year over \$2,000 he shall pay Percentage payable to the Province, to the Treasurer of Ontario the following percentages,

(a) On the excess over \$2,000, up to \$2,500, ten per cent. thereof;

(b) On the excess over \$2,500, up to \$3,000, twenty per cent. thereof;

(c) On the excess over \$3,000, up to \$3,500, thirty per cent. thereof;

(d) On the excess over \$3,500, fifty per cent. thereof.

(3) This section shall not apply to a Crown Attorney or Clerk of the Peace for a Provisional Judicial District.
10 Edw. VII. c. 5, s. 3.

OFFICERS OF THE HIGH, COUNTY, AND SURROGATE COURTS.

4.—(1) Every Local Registrar of the High Court, Deputy Clerk of the Crown, Clerk of the County Court and Registrar of the Surrogate Court shall be entitled to retain to his own High Court, County Court and Surrogate Court Fees. use in each year his net income up to \$2,500.

Percentage
payable to
Province.

(2) Of the net income of each year over \$2,500 he shall pay to the Treasurer of Ontario the following percentages:—

- (a) On the excess over \$2,500, up to \$3,000, ten per cent. thereof;
- (b) On the excess over \$3,000, up to \$3,500, twenty per cent. thereof;
- (c) On the excess over \$3,500, up to \$5,000, fifty per cent. thereof;
- (d) On the excess over \$5,000, ninety per cent. thereof.
10 Edw. VII. c. 5, s. 4.

SHERIFFS.

Sheriffs.

5. Every Sheriff shall be entitled to retain to his own use in each year his net income up to \$6,500, but shall pay to the Treasurer of Ontario 90 per cent. of the excess over that sum.
2 Geo. V. c. 17, s. 2.

Sheriffs in
Provisional
Judicial
Districts.

6. The Lieutenant-Governor in Council may pay to the Sheriffs and other officers of every Provisional Judicial District by way of salary or otherwise out of any unappropriated moneys belonging to the Consolidated Revenue Fund, such several sums of money as he may think reasonable for the services performed by such officers. 3-4 Geo. V. c. 18, s. 6.

DIVISION COURT CLERKS.

Fees to be
retained by
Division
Court Clerks.

7.—(1) Every Division Court Clerk shall be entitled to retain to his own use in each year all the fees and emoluments earned by him in that year up to \$2,000.

Percentage
payable to
Province.

(2) Of the fees and emoluments earned by any Division Court Clerk in each year he shall pay to the Treasurer of Ontario a percentage of 20 per cent. on the excess over \$2,000.

GENERAL PROVISIONS.

Returns to be
made to
Provincial
Treasurer.

8. On or before the 15th day of January in each year every officer affected by this Act shall transmit to the Treasurer of Ontario a return under oath of all his fees and emoluments, including his salary, if any, whether received in cash or not, and also the disbursements incident to the business of the office or offices held by him, up to and including the 31st day of December of the next preceding year; and shall with such return transmit such portion of the fees and emoluments received by him during the next preceding year as he is required under this Act to pay to such Treasurer. 10 Edw. VII. c. 5, s. 6.

9. The money referred to in the next preceding section, when received, shall form part of the Consolidated Revenue Fund. 10 Edw. VII. c. 5, s. 7.

Application of moneys received by the Province.

10.—(1) The Lieutenant-Governor in Council may make rules and regulations for the management of the offices of such officers, and may, thereby, confer on the inspectors thereof such powers as may be deemed necessary for carrying out the provisions of this and all other Acts relating to the duties of such officers.

Rules and regulations for management of offices.

(2) Such rules and regulations shall be laid before the Assembly within the first ten days of the session next after the making thereof. 10 Edw. VII. c. 5, s. 8.

To be laid before Assembly.

11. The disbursements of such officers shall be subject to the revision of the inspectors, and for the purposes of such revision an inspector shall have power to take evidence and examine witnesses under oath. 10 Edw. VII. c. 5, s. 9.

Disbursements to be subject to revision of inspectors.

CHAPTER 18.

An Act respecting Inquiries concerning Public Matters.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Public Inquiries Act*. 8 Edw. VII. c. 8, s. 1.

Power to receive evidence on oath.

2. Whenever the Lieutenant-Governor in Council deems it expedient to cause inquiry to be made concerning any matter connected with or affecting the good government of Ontario, or the conduct of any part of the public business thereof, or of the administration of justice therein, and such inquiry is not regulated by any special law, he may, by commission appoint a person or persons to conduct such inquiry, and may confer the power of summoning any person and requiring him to give evidence on oath, and to produce such documents and things as the Commissioner or Commissioners deem requisite for the full investigation of the matters into which they are appointed to examine. 8 Edw. VII. c. 8, s. 2.

Power to compel attendance of witnesses.

3. The Commissioner or Commissioners shall have the same power to enforce the attendance of witnesses, and to compel them to give evidence and produce documents and things, as is vested in any Court in civil cases. 8 Edw. VII. c. 8, s. 3.

Application of Act.

Elections.

4.—(1) This Act shall include inquiry into matters connected with elections to the Assembly, and with the proceedings in any such election; but a commission shall not issue where a petition has been presented complaining of the return within the time prescribed, or until the proceedings thereon have terminated.

Corruptions.

(2) This Act shall apply to all attempts, or alleged attempts, to corrupt a candidate at any such election, or a member of the Assembly, after his election, and notwithstanding that the person charged with such attempts may be liable to criminal prosecution in respect thereof, or that criminal proceedings against him may have been commenced or concluded.

Power to take action on evidence.
Rev. Stat. c. 11.

(3) The Assembly, upon the evidence taken under the commission being submitted, may take, under *The Legislative Assembly Act*, or under any other authority belonging to the

Assembly, such action as may be deemed proper, as fully as ^{Rev. Stat.}
if such evidence had been given at the Bar of the Assembly. ^{c. 11.}

(4) No such action shall be taken against any person so ^{Circumstances}
charged founded upon evidence given by any witness unless ^{under which}
it appears that he had an opportunity of appearing before the ^{no action to be}
Commissioner or Commissioners and cross-examining the wit- ^{taken.}
ness either at the time that he was examined in chief or
subsequently, and that he had also an opportunity of calling
witnesses on his own behalf.

(5) A Commission for an inquiry under this section shall ^{Commission}
not be issued during a Session of this Legislature without the ^{not be held}
consent of the Assembly. 8 Edw. VII. c. 8, s. 4. ^{during a Ses-}
^{sion without}
^{leave.}

CHAPTER 19.

An Act respecting the Publication of Official Notices.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Official Notices Publication Act*. 9 Edw. VII. c. 7, s. 1.

Certain notices to be published in *Ontario Gazette*.

2.—(1) Unless some other mode of publication is required by law, the following notices shall be published in the *Ontario Gazette*,

R.S.C. 1906, c. 40, s. 33.

(a) All proclamations issued by the Lieutenant-Governor or under the authority of the Lieutenant-Governor in Council, and all official notices, orders in Council, regulations, advertisements and documents relating to Ontario or matters under the control of this Legislature and requiring publication;

(b) All advertisements, notices and publications which are required to be given by the Crown or by any Department of the Government or by a Sheriff or by any municipal authority or by any officer or person whomsoever.

Notices published under Acts of Upper Canada or Canada.

(2) If in any Act of the late Province of Upper Canada or of the late Province of Canada, in force in Ontario, and being within the authority of the Legislature of Ontario, any notice is directed to be given in the *Upper Canada Gazette* or in the *Canada Gazette*, the same shall be given in the *Ontario Gazette*. 9 Edw. VII. c. 7, s. 2.

Publication of legal and official advertisements.

3. Where Sheriffs' advertisements or other legal or official advertisements (except advertisements of which the whole expense is payable by a municipal corporation), are required to be published in a newspaper other than the *Ontario Gazette*, they shall be published in such newspaper as the Lieutenant-Governor in Council may direct. 9 Edw. VII. c. 7, s. 3.

Tenders to be made for publication of advertisements paid for by counties.

4. Tenders for the publication of legal and official advertisements of which the whole expense is payable by the county shall be publicly advertised for by the council, subject to such conditions as to circulation and other matters as the council may think just, and the contract shall be given to the newspaper making the lowest tender published within the county. 9 Edw. VII. c. 7, s. 4.

SECTION V.

PUBLIC DEPARTMENTS, REVENUE AND PROPERTY.

1. REVENUE AND FINANCE.

CHAPTER 20.

An Act respecting the Consolidated Revenue Fund.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Consolidated Revenue Fund Act*. 8 Edw. VII. c. 10, s. 1. Short title.

2. All special Funds and the income and revenue therefrom, and all public moneys and revenues over which this Legislature has the power of appropriation, shall form one Fund, to be called "The Consolidated Revenue Fund," to be appropriated for the public service of Ontario, in the manner and subject to the charges hereinafter mentioned. 8 Edw. VII. c. 10, s. 2. Sources of the Fund.

3. The Consolidated Revenue Fund shall be permanently charged with all the costs, charges and expenses incident to the collection, management and receipt thereof, subject to review and audit in the manner directed by any Act of this Legislature. 8 Edw. VII. c. 10, s. 3. Permanent charges.

4. The Lieutenant-Governor in Council may, in his discretion, invest any surplus of the Consolidated Revenue Fund not required for the public service, in the debentures or other public securities of the Dominion of Canada, or of any of the Provinces thereof, or of the United Kingdom or any of its colonies, and may sell and dispose of the same. 8 Edw. VII. c. 10, s. 4. Investment of surplus.

Vesting of securities, etc., in Treasurer of Ontario and his successors.

5.—(1) Where any security, obligation, debenture or covenant, or any interest in real or personal estate, effects, or property is given, or transferred to, made with, or vested in the Treasurer of Ontario, by virtue of his office, the security, obligation, debenture or covenant, and any right of action in respect thereto, and all the estate right or interest of the Treasurer in respect thereof, upon the death, resignation or removal from office of the Treasurer, shall, subject to the same trusts as the same were respectively subject to, vest in the succeeding Treasurer, and may be proceeded on by action or in any other manner, or may be assigned, transferred or discharged, in the name of the succeeding Treasurer.

Realizing on securities.

(2) A security, obligation, debenture, covenant or an interest in real or personal estate, effects and property may be proceeded on in the name of, or assigned, transferred or discharged by, any member of the Executive Council of Ontario, acting under the authority of *The Executive Council Act*.

Rev. Stat. c. 13.

Application of section.

(3) This section shall apply to every security, obligation, debenture or covenant, and every interest in real or personal estate, effects or property given or transferred to, made with, or vested in any former Treasurer, by virtue or on account of his office, and shall transfer all the interest, rights and estate of the former Treasurer to the Treasurer for the time being to be vested in him by virtue of his office and subject to the provisions of this Act. 8 Edw. VII. c. 10, s. 5.

How public moneys to be paid.

6. If any sum of the public moneys is by an Act appropriated for any purpose, or directed by the judgment of any Court or the award of arbitrators or other lawful authority to be paid by the Lieutenant-Governor, and no other provision is made respecting it, such sum shall be payable under warrant of the Lieutenant-Governor, directed to the Treasurer of Ontario, out of the Consolidated Revenue Fund; and all persons entrusted with the expenditure of any such sum, or any part thereof, shall account for the same in such manner and form, with such vouchers, at such periods and to such officer, as the Lieutenant-Governor may direct. 8 Edw. VII. c. 10, s. 6.

Accounting for same.

CHAPTER 21.

An Act respecting the Raising of Loans authorized by the Legislature.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Provincial Loans Act*. 8 Short title.
Edw. VII. c. 12, s. 1.

2.—(1) The Lieutenant-Governor in Council may create a permanent provincial stock, which shall be known as “Ontario Government Stock,” and shall be personal property, and the stock, and the interest thereon, shall be charged upon and paid out of the Consolidated Revenue Fund. Lieutenant-Governor in Council may create a permanent Provincial Stock.

(2) The stock shall be subject to such regulations as to the inscription, registration, transfer, management and redemption thereof as the Lieutenant-Governor in Council may make. Regulations as to stock.

(3) The stock shall not be redeemable in less than thirty years from the date of issue, but may be redeemed at or after that date, at the option of the Lieutenant-Governor in Council, provided six months’ previous notice has been given, and the Lieutenant-Governor in Council may at the time of issue of such stock fix the date at which it shall be redeemed. Stock not to be paid off for 30 years.

(4) The notice may be given by a registered letter addressed to the registered holder of the stock at his address as it appears in the Register. 8 Edw. VII. c. 12, s. 2. Notice of payment.

3. The Lieutenant-Governor in Council may make such regulations as he deems necessary for the management of the public debt and the payment of the interest thereon, and may, subject to the provisions of the next following section, provide for the creation and management of a sinking fund, or other means of securing the repayment of any loan raised by the authority of the Legislature; and may appoint one or more fiscal agents in London, England, or elsewhere, and agree with them as to the rate of compensation to be allowed them for negotiating loans, and for paying the interest of the debt, and may pay the sums necessary to provide the interest, the sinking fund, or other means aforesaid, and such compensation out of the Consolidated Revenue Fund. 8 Edw. VII. c. 12, s. 3. Lieutenant-Governor in Council to make regulations as to the debt and payment of interest. Fiscal agents, etc.

How loans,
etc., authorized
by Legislature,
may be raised.

4.—(1) Where in any Act authority is given to the Lieutenant-Governor in Council to raise, by way of loan, any sum of money, then, unless there is some provision to the contrary in the Act by which the authority is given, such sum shall, in the discretion of the Lieutenant-Governor in Council, be raised in one of the following ways, or partly in one and partly in another or others thereof, that is to say,

By issue of
debentures.

(a) By the issue and sale of debentures of Ontario, which shall be in such form, for such separate sums, and at such rate of interest not exceeding six per centum per annum, and the principal and interest whereof shall be made payable at such periods and places as the Lieutenant-Governor in Council deems expedient, and subject to such regulations, including regulations as to inscription, registration and transfer as he may make, and such principal and interest shall be charged on and paid out of the Consolidated Revenue Fund;

By issue of
Ontario Gov-
ernment stock.

(b) By the issue and sale of "Ontario Government Stock," bearing such rate of interest not exceeding six per cent. per annum, as is deemed expedient, payable half-yearly, and the principal and interest whereof shall be charged on and paid out of the Consolidated Revenue Fund;

By grant of
terminable
annuities.

(c) By the granting of terminable annuities charged on and to be paid out of the Consolidated Revenue Fund, on terms in accordance with what the Lieutenant-Governor in Council may deem to be the most approved English tables, and based on a rate of interest not exceeding four per cent. per annum, and subject to such regulations as the Lieutenant-Governor in Council may make;

By issue of
exchequer
bills, or bonds,
or treasury
bills.

(d) By the issue and sale of exchequer bills, exchequer bonds or treasury bills, in sums of not less than four hundred dollars each, in such form and payable at such periods and places as the Lieutenant-Governor in Council deems expedient, and subject to such regulations as he may make, or by temporary loans; and the interest thereon and the amount of such bills or bonds shall be charged on and paid out of the Consolidated Revenue Fund.

Lieutenant-
Governor in
Council may
provide a sink-
ing fund, gen-
eral or special.

(2) On authorizing the issue of debentures or stock, under clauses (a) or (b) of subsection 1, the Lieutenant-Governor in Council may provide for a special sinking fund with respect to such issue, and may at any time provide for a general sinking fund for all such portions of the debentures or stock as have been or are hereafter issued without provision for a sinking fund with respect to them; provided that the amount to be invested out of the Consolidated Revenue Fund in any such sinking fund shall not exceed one-half of one per

Proviso.

cent. per annum on the amount of the debentures or stock to which it relates.

(3) Any of such securities may be made payable in any currency. 8 Edw. VII. c. 12, s. 4. Securities payable in any currency.

5. The Lieutenant-Governor in Council may direct that the whole or any part of Ontario Government stock be inscribed and transferred in a register kept in the United Kingdom, or in any foreign country, at such place, and by such bank, officer or person as he may appoint. 8 Edw. VII. c. 12, s. 5. Register for inscribed stock of Ontario.

6.—(1) The Lieutenant-Governor may, under the Great Seal or in Council, authorize any person to make any declaration, and take any steps necessary to record such inscribed stock or any portion thereof under and in accordance with the provisions of the Imperial Acts, known as the Colonial Stock Acts of 1877 to 1900, or any amendments thereof. Lieutenant-Governor in Council to have such stock recorded.

(2) The Treasurer of Ontario may, out of the Consolidated Revenue Fund, pay, satisfy and discharge any judgment, decree, rule or order of a Court in the United Kingdom, which, under the provisions of section 20 of *The Colonial Stock Act, 1877*, or any amendment thereto, is to be complied with by the Registrar of the inscribed stock of Ontario in England. 8 Edw. VII. c. 12, s. 6. Payment, etc., authorized.

7. The Lieutenant-Governor in Council may change the form of any part of the debt of Ontario by substituting one class of the securities aforesaid for another, provided that neither the capital of the debt nor the annual charge for interest is thereby increased, except where a security bearing a lower rate of interest is substituted for one bearing a higher rate of interest, in which case only the amount of the capital may be increased by an amount not exceeding the difference between the then present value of the securities; but such substitution shall not be made unless the consent of the holder of the security for which another is substituted is obtained, or such security is previously purchased or redeemed by or on account of Ontario, and such substitution may be made by the sale of a security of one class and the purchase of that for which it is desired to substitute it. 8 Edw. VII. c. 12, s. 7. Lieutenant-Governor in Council may change the form of debt, and on what conditions.

8.—(1) The regulations made by the Lieutenant-Governor in Council under this or any former Act shall, in so far as they are not inconsistent with the Act under which they are made, have the same force and effect as if embodied and enacted in an Act of this Legislature. Certain regulations made by Lieutenant-Governor in Council to have force of law.

(2) No officer or person employed in the inscription, registration, transfer, management or redemption of any of the aforesaid securities, or in payment of any dividend or interest thereon, shall be bound to see to the execution of any trust, Officers not bound to see to trusts.

expressed or implied, to which such securities are subject, or shall be liable in any way to any person for anything by him done in accordance with any such regulation. 8 Edw. VII. c. 12, s. 8.

Money raised
to form part of
Con. Rev.
Fund.

9. All money raised by the issue and sale of any of the aforesaid securities shall be paid to the Treasurer, and shall form part of the Consolidated Revenue Fund. 8 Edw. VII. c. 12, s. 9.

Certain
securities free
from pro-
vincial taxes.

10. All money invested in Ontario Government stock, bonds or debentures and the interest thereon shall be free from all provincial taxes, succession duty, charges and impositions and shall also be exempt from municipal taxation. 8 Edw. VII. c. 12, s. 10.

Debt not to be
increased ex-
cept as herein
provided.

11. Nothing in this Act shall authorize any increase of the public debt without the express authority of this Legislature, except in the manner and to the extent hereinbefore mentioned. 8 Edw. VII. c. 12, s. 11.

Securities here-
tofore issued
protected.

12. Nothing in this Act shall impair or prejudicially affect the rights of the holder of any securities heretofore issued. 8 Edw. VII. c. 12, s. 12.

CHAPTER 22.

An Act respecting the Public Revenue.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Public Revenue Act*. Short title.
9 Edw. VII. c. 9, s. 1.

2. In this Act the word "Revenue" shall mean and include Interpretation.
all Provincial Revenue and all public money arising from any source whatsoever. 9 Edw. VII. c. 9, s. 2.

3. Every person whose duty it is to receive moneys forming Revenue Officers.
part of the Revenue, or who is entrusted with the custody or expenditure of such moneys although not regularly employed in collecting or managing the same, shall, in respect thereto, be subject to the provisions of this Act. 9 Edw. VII. c. 9, s. 3.

COLLECTION AND MANAGEMENT OF THE REVENUE.

4. The Lieutenant-Governor in Council may determine what persons it is necessary to employ in collecting or managing the Revenue, and in carrying into effect the laws relating thereto, and for preventing any contravention of such laws, and may assign their names of office, and grant, out of any money appropriated for that purpose by this Legislature, to such persons such salaries or remuneration as to the Lieutenant-Governor in Council may seem proper. Lieut.-Governor in Council shall determine what officers are necessary, and fix their salaries. 9 Edw. VII. c. 9, s. 4.

5.—(1) Except where otherwise provided by law, the salary or remuneration allowed to any such person shall be in lieu of all fees, allowances or emoluments, except actual and authorized disbursements. Salaries to be in lieu of all other emoluments.

(2) No such person, receiving a salary at or exceeding the rate of \$1,000 per annum, shall exercise any other calling, profession, trade or employment whatsoever with a view to derive profit therefrom, directly or indirectly, or shall hold any other office of profit whatsoever, except an office relating to the collection or management of the Revenue, held by such person with the permission of the Lieutenant-Governor in Council. Officer receiving \$1,000 per annum not to follow any other occupation. 9 Edw. VII. c. 9, s. 5.

6. Every person appointed to any office or employment relating to the collection or management of the Revenue, on Officers to take an oath of office.

his admission to such office or employment, shall take, before such officer as the Lieutenant-Governor may appoint, the following oath:—

“I, A. B., do swear to be true and faithful in the execution, to the best of my knowledge and power, of the trust committed to my charge by my appointment as _____, and that I will not require, take or receive any fee, perquisite, gratuity or reward, whether pecuniary or of any other sort or description whatsoever either directly or indirectly, for any service, act, duty, matter or thing done or performed or to be done or performed in the execution or discharge of any of the duties of my office or employment, on any account whatsoever, other than my salary, or what shall be allowed me by law; So help me God.”

9 Edw. VII. c. 9, s. 6.

Lieutenant-Governor in Council may divide Province into Revenue Divisions.

7. The Lieutenant-Governor in Council may make such divisions of the Province into districts or otherwise as are required with regard to the collection or management of the Revenue, and may assign the officers or persons by whom any duty or service relating to such purpose shall be performed within or for such district or division, and the place or places where such duty or service shall be performed, and may make all such regulations concerning such officers and persons, and the conduct and management of the business to them entrusted, as he may deem expedient. 9 Edw. VII. c. 9, s. 7.

Persons employed with the concurrence of the Lieut.-Governor in Council to be deemed the proper officers.

8.—(1) A person employed on any duty or service relating to the collection or management of the Revenue, by the order or with the concurrence of the Lieutenant-Governor in Council, whether previously or subsequently expressed, shall be deemed to be the proper officer for that duty or service; and every act, matter or thing required by any law to be done or performed by, to or with any particular officer nominated for that purpose in such law, being done or performed by, to or with any person appointed or authorized by the Lieutenant-Governor in Council to act for or in behalf of such particular officer, shall be deemed to be done or performed by, to or with him.

Place for performance of acts required by law.

(2) Every act, matter or thing required by law to be done at any particular place within any district or division of Ontario, being done at any place within such district or division, appointed by the Lieutenant-Governor in Council for the purpose, shall be deemed to be done at the particular place so required. 9 Edw. VII. c. 9, s. 8.

Officers employed in one branch may be employed in another.

9. An officer or person employed in the collection, management or accounting for any branch of the Revenue may be employed in the collection, management or accounting for any other branch thereof. 9 Edw. VII. c. 9, s. 9.

Hours of office and seasons for certain business, how appointed.

10. The Lieutenant-Governor in Council may appoint the hours of general attendance of the officers and persons employed in the collection or management of the Revenue at

their proper offices and places of employment; and may also appoint the times during such hours, or the seasons of the year, at which any particular parts of the duties of such officers or other persons shall be performed by them respectively; and a notice of the hours of general attendance so appointed shall be kept constantly posted up in some conspicuous place in such offices or places of employment. 9 Edw. VII. c. 9, s. 10.

11. No officer employed in the collection of the Revenue shall be required to keep his office open on any holiday. Offices may be closed on holidays. 9 Edw. VII. c. 9, s. 11.

12. The Lieutenant-Governor in Council may direct any person employed in collecting or managing the Revenue to keep such books or accounts as he may deem advisable, and may allow any necessary expense incurred for the purpose. Lieutenant-Governor in Council may direct accounts to be kept. 9 Edw. VII. c. 9, s. 12.

13. All public moneys, from whatsoever source derived, and all moneys forming part of special funds administered by the Government, shall be paid to the credit of the Treasurer of Ontario in such manner as the Lieutenant-Governor in Council may direct. Public money to be paid to credit of the Treasurer. 9 Edw. VII. c. 9, s. 13.

14. The Lieutenant-Governor in Council may appoint the times and mode in which any person employed in the collection or management of the Revenue shall account for and pay over the money which comes into his hands to the person appointed to receive the same. Lieutenant-Governor in Council to appoint the mode and times in which moneys shall be accounted for and paid over. 9 Edw. VII. c. 9, s. 14.

LIABILITY OF PUBLIC ACCOUNTANTS AND REVENUE OFFICERS.

15. If any person refuses or neglects to transmit any account, statement or return, with the proper vouchers, to the proper officer or department on or before the day appointed for the transmission thereof, such person shall for such refusal or neglect forfeit and pay to the Crown, for the public uses of Ontario, \$100, and in an action for the recovery of such sum it shall be sufficient to prove that such account, statement or return ought to have been transmitted by the defendant, and the onus of proving that the same was so transmitted shall rest upon him. Penalty for not transmitting accounts. Proof in action for recovery of penalty. 9 Edw. VII. c. 9, s. 15.

16.—(1) Where the Treasurer has reason to believe that any person has received money for the Crown, or for which he is accountable to the Crown, or has in his hands public money applicable to any purpose, and has not paid over or duly applied and accounted for the same, he may give notice to such person, or to his personal representative in case of his death, requiring him within a time to be therein named, to pay over, apply and account for such money to the Treasurer, or to the officer mentioned in the notice, and to transmit the proper vouchers that he has so done. Notice to persons neglecting to pay over money received for public purposes.

Service of
notice.

(2) The notice may be served by delivering a copy to the person to whom it is addressed, or by leaving it for him at his usual place of abode. 9 Edw. VII. c. 9, s. 16.

Proceedings
against per-
sons refusing
to comply
with notice.

17. If any person fails to pay over, apply or account for such money, and to transmit the vouchers within the time limited by the notice, the Treasurer may state an account as between such person and the Crown in the matter to which the notice relates, charging interest from the service, or from any earlier date from which interest may be payable, and shall deliver a copy thereof to the Attorney-General, and such copy shall be *prima facie* evidence to support an information or other proceeding for the recovery of the amount therein shewn to be in the hands of the defendant as a debt due to the Crown. 9 Edw. VII. c. 9, s. 17.

Proceedings
against persons
transmitting
accounts with-
out vouchers.

18. Where such person has transmitted an account either before or after the notice, but without vouchers or with insufficient vouchers for any sum for which he therein takes credit, the Treasurer may give notice in the manner provided by section 16, to transmit vouchers, or sufficient vouchers within a time to be named in the notice; and if the vouchers are not transmitted within that time, the Treasurer may state an account against such person disregarding the sums for which he has taken credit, but for which he has transmitted no vouchers or insufficient vouchers, and may deliver a copy of the account to the Attorney-General, and the copy may be used in the same manner and with the same effect as the copy mentioned in the last preceding section. 9 Edw. VII. c. 9, s. 18.

Responsibility
for losses
arising from
malfeasance
or gross
neglect, etc.

19. If by reason of malfeasance or gross carelessness or neglect of duty by any person employed in the collection or management of the Revenue a sum of money is lost to the Crown, such officer or person shall be accountable therefor as if he had collected and received the same. 9 Edw. VII. c. 9, s. 19.

Unapplied
public money
to be paid
to the
Treasurer on
demand.

20. If any person has received public money for the purpose of applying it to a specific purpose, and has not so applied it within the time or in the manner provided by law, he shall be deemed to have received such money for the Crown for the public uses of Ontario, and may be notified by the Treasurer to repay such sum to him, and the same may be recovered as a debt due to the Crown, and an equal sum out of the Consolidated Revenue Fund may in the meantime be applied to the purpose to which such sum ought to have been applied. 9 Edw. VII. c. 9, s. 20.

Recovery, if
not so paid.

No officer to
take any fee,
etc., on pain
of dismissal.

21. If a person acting in any office or employment connected with the collection or management of the Revenue takes or receives, directly or indirectly, any fee, perquisite,

gratuity or reward, whether pecuniary or of any other description, from any person, not being a person authorized to pay or allow the same, on account of anything done by him in any way relating to his office or employment, except such as he receives by order or with the permission of the Lieutenant-Governor in Council, he may be dismissed from his office or employment; and if any person, not being authorized to pay or allow the same, gives, offers or promises any such fee, perquisite, gratuity, or reward, he shall, for every such offence, incur a penalty of \$400. 9 Edw. VII. c. 9, s. 21.

Penalty on persons offering fees, etc.

22. All books, papers, accounts and documents by whomsoever the paper and materials thereof were procured, furnished or paid for, kept by or used or received or taken into the possession of any person employed or having been employed in the collection or management of the Revenue, by virtue of his employment, shall be deemed to be chattels belonging to the Crown; and all moneys or valuable securities received or taken into his possession by virtue of his employment shall be deemed to be moneys and valuable securities belonging to the Crown. 9 Edw. VII. c. 9, s. 22.

All books, etc., used in the collection and the management of the revenue to be the property of His Majesty.

23. Nothing in this Act, nor any conviction for the contravention thereof, shall affect any remedy which the Crown by virtue of any other Act or law has for recovering or enforcing the payment or delivering of any money or property belonging to the Crown, and in the possession of any person, nor any remedy which His Majesty or any person has against the offender or his sureties, or against any other person; but the conviction of the offender shall not be received in evidence in any action against him. 9 Edw. VII. c. 9, s. 23.

Nothing in this Act to impair other remedies of the Crown.

CHAPTER 23.

An Act to provide for Auditing the Public Accounts
of the Province.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title 1. This Act may be cited as *The Audit Act*. 8 Edw. VII.
c. 9, s. 1.

Treasury Board. 2. The Lieutenant-Governor in Council may appoint three members of the Executive Council to be a board to be called the Treasury Board. 8 Edw. VII. c. 9, s. 2.

Appointment of Provincial Auditor.

3. The Lieutenant-Governor in Council may appoint an officer to be called the Auditor, who shall be paid a salary of \$4,000 per annum, which shall be charged to and paid out of the Consolidated Revenue Fund. 9 Edw. VII. c. 10, s. 1; 3-4 Geo. V. c. 18, s. 11.

4. The Auditor shall hold office during good behaviour, but shall be removable for cause by the Lieutenant-Governor on address of the Assembly. 8 Edw. VII. c. 9, s. 4.

Assistant Auditor.

5. In case of the illness or absence of the Auditor or of a vacancy in the office, the Lieutenant-Governor in Council may appoint the Chief Clerk or some other official in the Audit Office to act as Auditor *pro tempore*, and the officer so appointed shall during such absence or vacancy possess the powers and perform the duties of the Auditor. 8 Edw. VII. c. 9, s. 5.

Appointment of Officers.

6. The Lieutenant-Governor in Council may appoint such officers, clerks or persons as he may think necessary to be employed in the office of the Auditor. 8 Edw. VII. c. 9, s. 6.

Regulations for conducting 7.—(1) The auditor may

Regulations
for conducting
business of
office, how
made.

7.—(1) The auditor may

(a) Suspend any officer, clerk or other person employed
in his office;

(b) Make rules and orders for the internal government of his office, and for the guidance of persons accounting for public moneys, in making up and rendering their accounts for examination.

(2) The rules and orders shall not go into effect until approved by the Treasury Board, and shall be laid before the Assembly within the first ten days of the Session next after the approval thereof. 8 Edw. VII. c. 9, s. 7.

8. The Auditor and the Assistant Treasurer shall examine and cancel debentures, or other Provincial securities, representing any debt of Ontario which have been redeemed. 8 Edw. VII. c. 9, s. 8. Cancelling debentures.

9. The deputy heads of the several departments, or the officers, clerks or other persons charged with the expenditure of public moneys, shall respectively audit the details of the accounts of the several services in the first instance, and be responsible for the correctness of the audit. 8 Edw. VII. c. 9, s. 9. Audit by deputy heads, etc.

10.—(1) The Auditor shall, subject to the exceptions hereinafter mentioned, examine, check and audit all accounts of receipts and expenditure of public moneys and moneys received or expended on account of or in trust for any other person. 8 Edw. VII. c. 9, s. 10 (1); 9 Edw. VII. c. 10, s. 2. Auditor to audit public accounts.

(2) This section shall apply to the receipts and expenditures of any department of the Government and of Commissioners appointed to manage any department, service, property or business of Ontario when the Treasurer directs that such audit shall be made. Application of section.

(3) In conducting the examination of the vouchers relating to the appropriations for the several services sanctioned by the Appropriation Act of the year, or by any other Act of this Legislature, the Auditor shall test the accuracy of the castings and computations of the several items of the vouchers; but if he is satisfied that the accounts bear evidence that the vouchers have been completely checked, examined, and certified as correct in every respect, and that they have been allowed, and passed by the proper officers, he may admit them as satisfactory: Provided always, that if the Treasurer desires any voucher to be examined by the Auditor in greater detail, the Auditor shall cause such voucher to be subjected to such examination in detail as the Treasurer may prescribe. 8 Edw. VII. c. 9, s. 10 (2), (3). Examination of vouchers.

11. The Auditor may examine any person on oath as to any matter pertinent to any account submitted for audit. 8 Edw. VII. c. 9, s. 11. Auditor may examine on oath.

12. The Auditor shall, subject to the exceptions hereinafter mentioned, see that no cheque issues for the payment of any public money, for which there is no direct legislative appropriation, or in excess of any portion of such appropriation the expenditure of which has been authorized by the Lieutenant-Governor in Council, and he shall report to the Auditor to see that money is not expended without or in excess of appropriation.

Lieutenant-Governor in Council, through the Treasurer, any case in which money has been expended out of the proceeds of any accountable warrant for any purpose for which there is no sufficient authority, or beyond the amount for which there is such authority. 8 Edw. VII. c. 9, s. 12.

Application of money voted for salaries during vacancies by death, resignation, etc.

13. Where money is voted for the salaries of the officers or clerks in any branch of the Government service, and in consequence of the death or resignation of any such officer or clerk, or through a vacancy otherwise caused, any part of such money is not required for the payment of salaries, but is required for the remuneration of persons employed to perform work in such branch during the vacancy, the same may be used for that purpose; and any person temporarily employed may be paid out of the appropriation available on account of any such vacancy at such rate, not exceeding the allowance which was payable to such officer or clerk whose office may be vacant, as may be determined by the head of the Department or by the Lieutenant-Governor in Council. 2 Geo. V. c. 17, s. 4; 3-4 Geo. V. c. 18, s. 10.

When only cheques may issue without certificate of Auditor.

14.—(1) A cheque for public money shall not issue except upon the certificate of the Auditor that there is legislative authority for the expenditure, save only in the following cases:—

Upon advice of Attorney-General.

(a) When, upon an application for a cheque, the Auditor has reported that there is no legislative authority, or that the expenditure is not authorized by law, then, upon the written opinion of the Attorney-General, or of the Deputy Attorney-General, that there is legislative authority, citing it, or that upon the facts as stated by the Auditor the payment is authorized by law, the Treasurer may direct the issue of the cheque, and the Auditor shall countersign it;

Cases of urgency.

(b) If, when the Legislature is not in session an accident happens to any public work or building which requires an immediate outlay for the repair thereof, or any other occasion arises when an expenditure not foreseen or provided for by the Legislature is urgently and immediately required for the public good, then, upon the report of the Treasurer that there is no legislative provision therefor, and of the Minister having charge of the service that the necessity is urgent and for the public good, the Lieutenant-Governor in Council may order a special warrant to be prepared, to be signed by the Lieutenant-Governor for the issue of the amount estimated to be required, which shall be placed by the Treasurer to a special account, against which cheques may issue, as may be required. 8 Edw. VII. c. 9, s. 13 (1), cl. (a) and (b).

- (c) When the Auditor has for any reason refused to certify that a cheque may issue, the Department making requisition for the cheque shall notify him that the matter will be referred to the Treasury Board and thereupon the correspondence in the case together with a memorandum stating:

Reference to
Treasury
Board.

- i. The purpose for which the expenditure is required;
- ii. The appropriation to which the expenditure is chargeable;
- iii. The objections taken by the Auditor;
- iv. The answers to such objections

shall be submitted by the Minister in charge of the Department to the Treasury Board and the Board may determine as to the sufficiency of the Auditor's objections, and may in their discretion order the issue of the cheque and the Auditor shall countersign it. 9 Edw. VII. c. 10, s. 3.

- (d) In the cases provided for by section 18. 1 Geo. V. c. 17, s. 5 (2). Criminal
enquiries.

(2) The Auditor shall prepare a statement of all such legal opinions, reports to Council, special warrants, and cheques for the issue of which he has refused to certify, and of all expenditures incurred in consequence thereof, and such statement shall be delivered to the Treasurer and be laid before the Assembly not later than the third day of the Session of the Legislature then next ensuing. 9 Edw. VII. c. 10, s. 6.

Statement by
Auditor of
cheques, etc.,
issued without
his certificate.

15. The Auditor shall countersign all cheques issued by the Treasurer, but before countersigning shall satisfy himself that the issue of the cheque is authorized. 8 Edw. VII. c. 9, s. 14.

Counter-
signing
cheques.

16. The Auditor shall keep a cheque record-book with each bank upon which cheques are drawn, in which shall be entered all bank cheques countersigned by him, with the date of issue, the name of the person to whom payable, and the amount; and he shall initial the entry of each cheque countersigned by him, after satisfying himself that the entry is correct. 8 Edw. VII. c. 9, s. 15.

Cheque record
book to be
kept.

17. No payment shall be authorized by the Auditor in respect of work performed, or materials supplied by any person in connection with any part of the public service, unless, in addition to any other voucher or certificate which may be required, the officer under whose special charge such part of the public service is certifies that the work has been performed, or the materials supplied, as the case may be, and

Accounts for
work, etc., to
be certified by
officer in
charge.

that the price charged is according to contract, or, if not covered by a contract, is fair and just. 8 Edw. VII. c. 9, s. 16.

Payments for
criminal
investigation.

18.—(1) The certificate or order of the Attorney-General or the Deputy Attorney-General that any sum of money is required to be paid out of the Consolidated Revenue Fund on account of the investigation, detection or punishment of any offence against the laws of Ontario or of Canada, or on account of special services or disbursements in connection with inquests, or any purpose connected with the administration of justice in either civil or criminal matters, shall be sufficient authority for the issuing of a cheque by the Treasurer of the Province for the amount named in such certificate or order, and the officer or other person to whom the cheque is issued shall account to the Attorney-General for the proper disbursement of the amount received by such officer or other person. 8 Edw. VII. c. 9, s. 17 (1); 1 Geo. V. c. 17, s. 5 (1).

Certificate that
moneys
accounted for.

(2) The certificate of the Attorney-General or Deputy Attorney-General that any moneys received by any officer or other person under this Act have been duly accounted for shall be final and conclusive and the account shall not be subject to any further audit or examination. 8 Edw. VII. c. 9, s. 17 (2).

Accounts for
travelling
expenses, etc.,
not exceeding
\$100.

19. Where the account of any official for transportation, travelling and incidental expenses does not exceed the sum of \$100, such account may be certified by the Minister, or Acting Minister, to whose Department such official belongs, and when so certified shall be sufficient authority for the issuing of a cheque by the Treasurer for the amount thereof, and the Auditor shall countersign such cheque, and shall also countersign all cheques issued under the authority of this section, and a statement giving a list of such certificates shall be published in the public accounts for the year. 9 Edw. VII. c. 10, s. 4.

Allowances for
travelling and
living ex-
penses.

20. The Lieutenant-Governor in Council may make regulations for fixing the scale of allowances for the travelling and living expenses to be allowed to any person employed in or in connection with any part of the Public Service. 8 Edw. VII. c. 9, s. 18.

Fiscal year.

21.—(1) The Public Accounts shall include the period from the first day of November in one year to the thirty-first day of October in the next year, which period shall constitute the fiscal year; all estimates submitted to the Legislature shall be for the services coming in course of payment during the fiscal year; and all balances of appropriation which remain unexpended at the end of the fiscal year shall lapse and be written off; provided, that upon cause being shown to the satisfaction of the Lieutenant-Governor in Council he may, by Order in Council to be made before the first day of December

of each year, extend the time for finally closing the account of any appropriation, for a period of not more than one month from the end of the fiscal year, after the expiration of which extended time, and not before, the balance of such appropriation shall lapse and be written off. 9 Edw. VII. c. 11, s. 2.

(2) The Auditor shall prepare and deliver to the Treasurer the Public Accounts to be laid before the Assembly. ^{Preparation of public accounts.} 8 Edw. VII. c. 9, s. 19 (2).

22.—(1) The Lieutenant-Governor in Council may, when the exigencies of the public service require, in the event of the Consolidated Revenue Fund being insufficient to meet the charge placed thereon by law, raise by temporary loans chargeable on the fund, for such periods, not exceeding six months, such sums as are necessary to enable the fund to meet such charges. ^{Temporary loans authorized.}

(2) The sums so raised shall never exceed the amount of the Limit. deficiency in the Consolidated Revenue Fund to meet the charges thereon then due or payable, either as principal or interest, and shall be applied to no other purpose.

(3) An account in detail of all such temporary loans shall be laid before the Assembly within the first fifteen days of the session next ensuing. ^{Reporting to Assembly.} 8 Edw. VII. c. 9, s. 20.

23. The Treasury Board may alter the period at or to which any person accountable for public moneys is required to render any account or to make any return, whenever in their opinion the alteration will facilitate the preparation of the public accounts or estimates, anything in any Act to the contrary notwithstanding. ^{Treasury board may alter date of returns.} 8 Edw. VII. c. 9, s. 21.

24. The Auditor shall

^{Appropriation ledger.}

- (a) keep an appropriation ledger, in which shall be entered the supply grants comprised in the Appropriation Act for the year, against which shall be charged all authorized expenditure out of the appropriations;
- (b) shall furnish to each Department monthly a statement of the charges entered against the several appropriations belonging to such Department, and shewing the balances at the credit of the appropriations at the close of the month;
- (c) whenever an appropriation is exhausted, at once notify the Department to which the appropriation belongs, and not sanction any further payments to be charged to such exhausted appropriation except as hereinafter provided. 8 Edw. VII. c. 9, s. 22.

Determination of differences as to charges against appropriations.

25. If a difference arises between the Auditor and any Department respecting the appropriation to which an authorized expenditure should be charged, such difference may be referred by the Department to the Treasury Board, and the Board shall determine in what manner and to what appropriation or account such expenditure shall be charged. 8 Edw. VII. c. 9, s. 23.

Payments in excess of appropriations.

26.—(1) Where an appropriation is exhausted and the public interest or the urgent requirements of the public service necessitate further payments, the head of the Department to which the appropriation belongs, or his Deputy shall transmit to the Auditor the accounts for which payment is asked, with a special report as to the necessity for payment and the reasons why the appropriation is insufficient.

Submission to Treasury Board.

(2) The Auditor shall submit the accounts and the report to the Treasury Board, with such remarks either approving or disapproving of the payment as he may consider necessary.

Payment if approved.

(3) If the Board approves of payment of the accounts the Auditor, upon being notified of such approval, shall authorize the issue of cheques therefor. 8 Edw. VII. c. 9, s. 24.

Payments authorized by Assembly.

27. Notwithstanding anything in this Act contained, whenever the Assembly has concurred in the report of the Committee of Supply recommending the passing of any estimates of expenditure, the Lieutenant-Governor in Council may authorize the payment of any items of expenditure so concurred in. 8 Edw. VII. c. 9, s. 25.

Report of over expenditure.

28. The Auditor shall report to the Treasurer, for the information of the Assembly, all expenditures in excess of the appropriations by the Appropriation Act, citing the recommendation and explanation of the Department and the authority of the Treasury Board. 8 Edw. VII. c. 9, s. 26.

Particulars which are to be mentioned in report of Auditor.

29. In reporting for the information of the Assembly the result of the examination of the appropriation accounts, the Auditor shall call attention to every case in which it appears to him that a grant has been exceeded, or that money received by a Department from other sources than the grants for the year to which the account relates has not been applied or accounted for according to the directions of the Legislature, or that a sum charged against a grant is not supported by proof of payment, or that a payment so charged did not occur within the period of the account, or was for any other reason not properly chargeable against the grant. 8 Edw. VII. c. 9, s. 27.

Report by Auditor to Legislative Assembly.

30. If the Treasurer does not, at the time prescribed by this Act, present to the Assembly any report made by the Auditor on the appropriation accounts, or any other accounts, the Auditor shall forthwith present such report. 8 Edw. VII. c. 9, s. 28.

31.—(1) Besides the appropriation accounts of the grants of the Legislature, the Auditor shall examine and audit, if required to do so by the Treasurer, and in accordance with any regulations that may be prescribed for his guidance by the Treasury Board, the following accounts:—

Accounts which are to be examined by Auditor.

- (a) The accounts of all receipts of revenues forming the Consolidated Revenue Fund;
- (b) The accounts current with the several banks and financial agents of the Province;
- (c) The accounts relating to the issue or redemption of loans; and
- (d) Any other public accounts which, though not relating directly to the receipts or expenditure of the Province, the Treasury Board may direct him to examine and audit. 8 Edw. VII. c. 9, s. 29.

32.—(1) The Treasury Board may direct in what manner and with what detail the Public Accounts and statements therein are to be prepared and may make regulations in regard thereto for the guidance of the Auditor who shall carry out the same.

Regulations of Treasury Board as to preparation of accounts.

(2) The Treasury Board may in like manner make regulations with regard to reports and statements to be made by the Auditor under section 14, and the detail with which the same shall be printed in the Public Accounts, and it shall be the duty of the Auditor to conform to any regulations so made. 9 Edw. VII. c. 10, s. 5.

33. The accounts which, by the last preceding section, the Treasurer is empowered to subject to the examination of the Auditor, shall be rendered to him by the Departments or officers directed so to do by the Treasurer; and the term "Accountant," when used in this and the following sections with reference to such accounts, shall be taken to mean the Department or officer that may be required to render the same; and every public officer into whose hands public moneys, either in the nature of revenue or fees of office, shall be paid by persons bound by law or regulation to do so, or by subordinate or other officers whose duty it may be to pay such moneys, wholly, or in part, into the account of the Treasurer, or to apply the same to any public service, shall, at such times and in such forms as the Treasury Board shall determine, render an account of his receipts and payments to the Auditor; and it shall be the duty of the Clerk of the Executive Council to inform the Auditor of the appointment of every such officer. 8 Edw. VII. c. 9, s. 30.

Accounts to be submitted to Auditor.

34.—(1) Where the Auditor is required by the Treasurer to examine and audit the accounts of the receipt, expenditure, sale, transfer, or delivery of any securities, stamps,

Approval of accounts.

Canadian or other Government stock or annuities, provisions, stores, or other property belonging to Ontario, he shall, on the examination of such accounts being completed, transmit a statement thereof, or a report thereon, to the Treasurer, who shall, if he thinks fit, signify his approval of such accounts.

Certificate
of Auditor,
effect of

(2) The Auditor, on receipt of such approval, shall thereupon transmit to the accountant a certificate in a form to be determined by the Auditor, which shall be to the accountant a valid and effectual discharge to the accountant from so much * as he may thereby appear to be discharged from. 8 Edw. VII. c. 9, s. 31.

Recovery of
balances of
public money
in hands of
accountants.

35. Every accountant, on the termination of his charge, or in the case of the death of an accountant his representatives, shall forthwith pay over any balance of public money then due to the Crown in respect of such charge to the public officer authorized to receive the same; and in all cases in which it shall appear to the Auditor that a balance of public money has been improperly or unnecessarily retained by an accountant, he shall report the circumstances to the Treasurer, who shall take such measures as to him may seem expedient for the recovery of such balance, with interest, upon the whole or such part thereof, for such period of time and at such rate as to the Treasurer may appear just and reasonable. 8 Edw. VII. c. 9, s. 32.

CHAPTER 24.

An Act respecting the payment of Succession Duty.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Succession Duty Act*.^{Short title}
9 Edw. VII. c. 12, s. 1.

2. In this Act,

Interpretation.

- (a) "Aggregate value" shall mean the fair market value of the property after the debts, encumbrances and other allowances authorized by section 4 are deducted therefrom, and for the purposes of determining the aggregate value and the rate of duty payable the value of property situate out of Ontario shall be included; ^{"Aggregate value."}
- (b) "Beneficial interest" and "dutiabie value" shall mean the fair market value of the property after the debts, incumbrances, and other allowances and exemptions authorized by this Act are deducted therefrom; ^{"Beneficial interest." "Dutiabie value."}
- (c) "Child" shall include any lawful child of the deceased or any lineal descendant of such child born in lawful wedlock or any person adopted while under the age of twelve years by the deceased as his child or any infant to whom the deceased for not less than five years immediately preceding his death stood in *loco parentis* or any lineal descendant of such adopted child or infant as aforesaid born in lawful wedlock; ^{"Child."}
- (d) "Executor" shall include administrator; ^{"Executor."}
- (e) "Interest in expectancy" shall include an estate, income or interest in remainder or reversion and any other future interest whether vested or contingent but shall not include a reversion expectant on the determination of a lease; ^{"Interest in expectancy."}
- (f) "Passing on the death" shall mean passing either immediately on the death or after an interval, either certainly, or contingently, and either ^{"Passing on the death."}

originally or by way of substitutive limitation, whether the deceased was at the time of his death domiciled in Ontario or elsewhere;

"Property."

(g) "Property" shall include real and personal property of every description and every estate and interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives;

"Treasurer."

(h) "Treasurer" shall mean the Treasurer of Ontario. 9 Edw. VII. c. 12, s. 2.

What dispositions and devolutions of property shall confer successions.

3. Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death happening after the first day of July, 1892, whether the death has heretofore or shall hereafter happen, of any person domiciled in Ontario, either immediately or after any interval, either certainly or contingently, and either originally, or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person so domiciled to any other person in possession or expectancy shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a "succession," and the term "successor" shall denote the person so entitled. 9 Edw. VII. c. 12, s. 3.

Allowances made in computing dutiable value.

4. In determining the dutiable value of property or the value of a beneficial interest in property the fair market value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses, debts and encumbrances and Surrogate Court fees (not including solicitor's charges); and any debt or encumbrance for which an allowance is made shall be deducted from the value of the land or other subject of property liable thereto; but an allowance shall not be made:—

No allowance to be made for certain debts and expenses of administration.

(a) For any debts incurred by the deceased or encumbrances created by a disposition made by him unless such debts or encumbrances were created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and to take effect out of his estate; nor

(b) For any debt in respect whereof there is a right to reimbursement from any other estate or person unless such reimbursement cannot be obtained; nor

- (c) More than once for the same debt or encumbrance charged upon different portions of the estate; nor
- (d) Save as aforesaid, for the expense of the administration of the estate or the execution of any trust created by the will of the deceased or by any instrument made by him in his lifetime. 9 Edw. VII. c. 12, s. 4.

5. Where in respect of any succession in Ontario any estate, legacy or succession duty is payable in any part of the British Dominions other than Ontario, or in a foreign country by the law of that country, in respect of which no allowance of duty is made under section 9, and the Treasurer is satisfied that by reason of such succession any duty is payable there in respect of it, he may allow the amount of that duty to be deducted from the value of the succession in Ontario. 10 Edw. VII. c. 6, s. 2, *part*.

Allowance
in respect
of duty paid
elsewhere.

6. No duty shall be leviable,—

Exemptions.

- (a) On any estate the aggregate value of which does not exceed \$10,000; Estates not exceeding \$10,000.
- (b) On property devised or bequeathed for religious, charitable or educational purposes to be carried out in Ontario, or by a corporation or a person resident in Ontario or on the amount of any unpaid subscription for any like purpose made by any person in his lifetime to any corporation or person mentioned in this subsection for which his estate is liable; Charitable bequests.
- (c) On property passing by will, intestacy, or otherwise to or for the use of a grandfather, grandmother, father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased where the aggregate value of the property of the deceased does not exceed \$50,000. 9 Edw. VII. c. 12, s. 6, *part*; 2 Geo. V. c. 17, s. 5. Property passing to certain persons not over \$50,000.
- (d) On any money received under a policy of insurance effected by any person on his life payable to any of the persons mentioned in subsection 3, whether as nominee or assignee or under the provision of a will or otherwise when the aggregate of such insurance or insurances does not exceed \$5,000; Life insurance not exceeding \$5,000.
- (e) On any bond, debenture or debenture stock issued by a corporation having its head office in Ontario where the same is transferable on a register at any place out of Ontario, and is owned by a person not domiciled at the time of his death in Ontario; Bond and debenture stock of certain corporations.

To one person
not over \$300.

(f) Where the whole value of any property passing to any one person does not exceed \$300. 9 Edw. VII. c. 12, s. 6, *part*.

Property
subject to
duty.

7.—(1) The following property as well as all other property subject to succession duty upon a succession shall be subject to succession duty at the rates hereinafter imposed;

Property
in Ontario.

(a) All property situate in Ontario and any income therefrom passing on the death of any person, whether the deceased was at the time of his death domiciled in Ontario or elsewhere;

Local situs
of specialty.

(b) Debts and sums of money due and owing from persons in Ontario to any deceased person at the time of his death on obligation or other specialty shall be property of the deceased situate in Ontario, without regard to the place where the obligation or specialty shall be at the time of the death of the deceased.

Property
deemed to pass
on the death.

(2) Property passing on the death of the deceased shall be deemed to include for all purposes of this Act the following property:—

Property trans-
ferred in con-
templation of
death.

(a) Any property, or income therefrom voluntarily transferred by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, bargainor, vendor, or donor, or made or intended to take effect in possession or enjoyment after such death to any person in trust or otherwise, or the effect of which is that any person becomes beneficially entitled in possession or expectancy to such property or income;

Donationes
mortis causa
and gifts
inter vivos.

(b) Any property, taken as a *donatio mortis causa*, or taken under a disposition purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been *bona fide* made twelve months before the death of the deceased, or property, taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise;

Property vested
jointly with
interest to
survivor.

(c) Any property which a person having been absolutely entitled thereto, has caused, or may cause to be transferred to, or vested in himself, and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or in some part thereof, passes or accrues by

survivorship on his death to such other person, including also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone or in concert, or by arrangement with any other person;

- (d) Any property, passing under any past or future settlement, including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not, as between the settlor and any other person, made by deed or other instrument not taking effect as a will, whereby an interest in such property or the proceeds of sale thereof for life, or any other period determinable by reference to death, is reserved, either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself, the right by the exercise of any power to restore to himself, or to reclaim the absolute interest in such property, or the proceeds of sale thereof, or to otherwise resettle the same or any part thereof; Property passing under settlement, etc.
- (e) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased; Annuities, insurance, etc.
- (f) Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of any existing or future donee, whether nominee or assignee, or for any person who may become a donee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit; Policies of insurance.
- (g) Any property of which the person dying was at the time of his death competent to dispose; and a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property as he thinks fit, whether the power is exercisable by instrument *inter vivos* or by will or both, including the powers exercisable by a tenant in tail whether in possession or not, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by him- Property over which decedent had power of disposal.

self or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose;

Dower and
curtesy.

(h) Any estate in dower or by the curtesy in any land of the person so dying of which the wife or husband of the deceased becomes entitled on the decease of such person.

Property trans-
ferred for full
consideration
in money's
worth not
liable.

(3) Nothing in this Act shall render liable for duty any property *bona fide* transferred for a consideration in money or money's worth, paid to the vendor or grantor for his own use and benefit, except to the extent, if any, to which the value of the property transferred exceeds that of the consideration so paid. 9 Edw. VII. c. 12, s. 7.

Rates of duty.

8. Save as aforesaid there shall be levied and paid for the purpose of raising a revenue for Provincial purposes in respect of any succession, or on property passing on the death according to the dutiable value the following duties over and above the fees paid under *The Surrogate Courts Act*:—

Rev. Stat.
c. 62.

Where
property
passes to grand-
parents, etc.,
and exceeds
\$50,000.

(1) Where the aggregate value of the property exceeds \$50,000, and any property passes in manner hereinbefore mentioned, either in whole or in part, to or for the benefit of the grandfather, grandmother, father, mother, husband, wife, child, son-in-law or daughter-in-law of the deceased, the same or so much thereof as so passes (as the case may be) shall be subject to a duty at the rate and on the scale as follows:—

Where the aggregate value

- (a) Exceeds \$50,000 and does not exceed \$75,000, 1 per cent.;
- (b) Exceeds \$75,000 and does not exceed \$100,000, 2 per cent.;
- (c) Exceeds \$100,000 and does not exceed \$150,000, 3 per cent.;
- (d) Exceeds \$150,000 and does not exceed \$200,000, 4 per cent.;
- (e) Exceeds \$200,000, 5 per cent.

Additional
duty where
share of
any lineal
exceeds
\$100,000.

(2) Provided that where the aggregate value of the property exceeds \$100,000, and the value of the property passing in manner hereinbefore mentioned to any one person

mentioned in the next preceding subsection exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing in addition to the rates in the next preceding subsection mentioned, as follows:—

Where the whole amount so passing to one person,—

- (a) Exceeds \$100,000 and does not exceed \$200,000,
1 per cent.;
- (b) Exceeds \$200,000 and does not exceed \$400,000,
1½ per cent.;
- (c) Exceeds \$400,000 and does not exceed \$600,000,
2 per cent.;
- (d) Exceeds \$600,000 and does not exceed \$800,000,
2½ per cent.;
- (e) Exceeds \$800,000 and does not exceed \$1,000,000,
3 per cent.;
- (f) Exceeds \$1,000,000 and does not exceed \$1,200,000,
4 per cent.;
- (g) Exceeds \$1,200,000, 5 per cent.

(3) Where the aggregate value of the property exceeds \$10,000, so much thereof as passes to or for the benefit of any lineal ancestor of the deceased, except the grandfather, grandmother, father and mother, or to any brother or sister of the deceased, or to any descendant of such brother or sister, or to a brother or sister of the father or mother of the deceased, or to any descendant of such last mentioned brother or sister, shall be subject to a duty of five per cent.

(4) Provided that where the aggregate value of the property exceeds \$50,000, and the amount passing in manner hereinbefore mentioned to any one person mentioned in the next preceding subsection, except the grandfather, grandmother, father, and mother, exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing in addition to the duty in the next preceding subsection mentioned as follows:—

Where the whole amount so passing to one person,—

- (a) Exceeds \$50,000 and does not exceed \$100,000, 1 per cent.;
- (b) Exceeds \$100,000 and does not exceed \$150,000, 1½ per cent.;
- (c) Exceeds \$150,000 and does not exceed \$200,000, 2 per cent.;
- (d) Exceeds \$200,000 and does not exceed \$250,000, 2½ per cent.;

Rate of duty where property passes to certain relatives.

Additional duty where more than \$50,000 passes to any collateral.

- (e) Exceeds \$250,000 and does not exceed \$300,000, 3 per cent.
- (f) Exceeds \$300,000 and does not exceed \$350,000, 3½ per cent.;
- (g) Exceeds \$350,000 and does not exceed \$400,000, 4 per cent.;
- (h) Exceeds \$400,000 and does not exceed \$450,000, 4½ per cent.;
- (i) Exceeds \$450,000, 5 per cent.

Additional
duty where
deceased dies
domiciled out
of Ontario,
how fixed.

(5) The additional duty provided for by subsections 2 and 4 shall be payable on the property in Ontario, where the deceased dies domiciled elsewhere than in Ontario, but for the purpose of fixing the rate of such duty, the beneficial interest in property out of Ontario passing to the successor or other person on the same death shall be added to the value of the property in Ontario, and nothing in this Act shall be construed to impose any duty, directly or otherwise, on property out of Ontario owned by any deceased person so domiciled.

Rate where
property passes
to other
persons.

(6) Where the aggregate value of the property exceeds \$10,000, so much thereof as passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above mentioned, or to or for the benefit of any stranger in blood to the deceased, save as is hereinbefore provided, shall be subject to a duty of ten per cent. 9 Edw. VII. c. 12, s. 8.

Allowance for
duty paid
elsewhere on
same death.

9. Where the Treasurer is satisfied that in any part of the British Dominions other than Ontario, or in any foreign country to which this section applies, any estate, legacy or succession duty is paid by reason of the succession in Ontario, an allowance for the duty so paid shall be made from the amount payable to this Province with respect to the same property; provided that any such allowance shall be made only as to such part of the British Dominions or as to such foreign country to which the Lieutenant-Governor in Council shall have extended the provisions of this section. Provided also that the Lieutenant-Governor in Council may revoke any Order in Council made under this section. 10 Edw. VII. c. 6, s. 2, *part*.

Provide.

Foreign ex-
ecutors, etc.,
not to transfer
stock until
duty paid.

10. No foreign executor shall assign or transfer any bond, debenture, stock or share of any bank or other corporation whatsoever, having its head office in Ontario, standing in the name of the deceased person, or in trust for him, until the duty, if any, is paid or security is given as required by section 11, and any such bank or corporation allowing a transfer of any debenture, bond, stock or share contrary

to this section shall be liable for such duty. 9 Edw. VII. c. 12, s. 10.

11.—(1) An executor or administrator applying for letters probate or letters of administration to the estate of a deceased person shall, before the issue of letters probate or of administration to him, make and file with the Surrogate Registrar a full, true and correct statement under oath showing,

Executors, etc., to file inventory and bonds for payment of duty.

- (a) A full inventory in detail of all the property of the deceased person and the market value thereof, and
- (b) The several persons to whom the same passes, their places of residence and the degrees of relationship, if any, in which they stand to the deceased;

and the executor or administrator shall, before the issue of letters probate or of administration, deliver to the Surrogate Registrar a bond in a penal sum not exceeding ten per centum of the sworn value of the property of the deceased person liable, or which may become liable, to succession duty, executed by himself and two sureties, to be approved by the Registrar, conditioned for the due payment to His Majesty of any duty for which such executor or administrator may be found liable.

(2) The Treasurer may accept a sufficient sum as security for the due payment of any duty, for which any executor, successor or other person accountable for the same may become liable, in lieu of or in addition to any other security, and he may in such case allow and pay to the executor or other person accountable, interest thereon at a rate not exceeding three per cent. per annum upon so much thereof as from time to time exceeds the amount of duty which has become payable under this Act. 9 Edw. VII. c. 12, s. 11 (1), (2).

Security may be given in cash.

(3) Every person to whom property passes for any beneficial interest in possession, and also to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing, or the management thereof, is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title, shall be accountable for the duty, and shall within six months after the death of the deceased, or such later time as may be allowed by the Treasurer, make and file with the Registrar of the Surrogate Court of the county or district in which the deceased had a fixed place of abode, or in which the property, or any part thereof, is situate, a statement under oath similar to that required by subsection 1; but this

Where no executor or administrator accountable for duty.

subsection shall not apply to property included in the statement required by subsection 1. 10 Edw. VII. c. 6, s. 2, *part*.

Property not disclosed on application for probate, etc.

(4) If at any time it shall be discovered that any property was not disclosed upon the grant of letters probate, or of administration, or the filing of the account, the person acting in the administration of such property, and the person, who is liable for the duty payable under this Act shall pay to the Treasurer the amount which, with the duty, if any, previously payable or paid on such property, shall be sufficient to cover the duty chargeable according to the true value thereof at the rates fixed by this Act, together with interest thereon, and shall at the same time pay to the Treasurer as a penalty a further duty of twenty-five per cent of the duty chargeable on the value of the property not disclosed, and shall also, within two months after the discovery of the omission, deliver to the Surrogate Registrar an affidavit or account setting forth the property so not disclosed, and the value thereof, in default of which he shall incur a penalty of \$10 for each day during which the default continues. 9 Edw. VII. c. 12, s. 11 (4).

Proceedings when Treasurer not satisfied with valuation.

12.—(1) In case the Treasurer is not satisfied with the value of any property as sworn to or with the correctness of any inventory, the Surrogate Judge of the county in which the property or any part thereof, subject to duty is situate shall, at the instance of the Treasurer and upon such notice by personal or substitutional service to the executor or such interested parties as he by order directs, enquire into the correctness of the inventory, and as to the value so sworn to, and value any property improperly omitted, fix and settle the amounts of the debts and other allowances and exemptions, and assess the cash value of every annuity, term of years, life estate, income or other estate, and of every interest in expectancy as provided by this Act, and shall at the time and place mentioned in the notice or any other time and place named by him value all property at the fair market value, and hear and determine all questions relative to the liability of property, the amount of duty and the executor, successor and other persons liable therefor

Powers of Judge.

(2) The Surrogate Judge shall have all the powers of a Judge of the County Court at the trial of any action and the power to compel discovery, the production of books, papers and documents and he may with the consent of the Official Guardian appoint for the purposes of this Act a guardian of any infant who has no guardian.

Enforcement of judgment.

(3) The judgment of the Surrogate Judge shall have the like force and effect and be enforceable in the same manner as a judgment of the County Court. 9 Edw. VII. c. 10, s. 12 (1-3).

(4) In lieu of or in addition to evidence of valuation of property the Surrogate Judge may in the first instance or at any time before judgment, and at the request of the Treasurer shall, issue a direction to the Sheriff of the county where any property is situate in respect to which duty is payable, or to some other competent person, to make an appraisement of the property mentioned in the inventory or any part thereof, or of any property wrongfully omitted. 10 Edw. VII. c. 6, s. 2, *part*.

Judge may direct appraisement of property by Sheriff.

(5) When so directed the sheriff shall forthwith appraise the property mentioned in the inventory, or any part thereof, as directed by the Surrogate Judge, or any property wrongfully omitted, at its fair market value at the date of death, or at the time provided in section 16, as the case may be, and make a report in writing to the Surrogate Judge of his appraisement and of such other facts as he may deem proper.

Appraisement at fair market value.

(6) The Sheriff shall be paid the following fees for services performed under this Act:—

Sheriff's fees.

\$1 for every hour up to five hours;

\$2 for every hour in important or difficult cases;

In no case to exceed \$10 per diem;

His actual and necessary travelling expenses. 9 Edw.

VII. c. 10, s. 12, (5), (6).

13. The value of every annuity, term of years, life estate, income or other estate and of every interest in expectancy, in respect of which duty is payable under this Act, shall for the purposes of this Act be determined by the rule, method and standards of mortality and of value which are employed by the Superintendent of Insurance in ascertaining the value of policies of life insurance and annuities for the determination of the liabilities of life insurance companies, save that the rate of interest to be taken for all purposes of computation under this section shall be four per cent. per annum; and the Superintendent of Insurance shall on the application of any Surrogate Judge determine the value of any annuity, term of years, life estate, income or other estate or of any interest in expectancy upon the facts contained in any such application and certify the same to the Surrogate Judge and his certificate shall be conclusive as to the matters dealt with therein. 9 Edw. VII. c. 12, s. 13.

Valuation of annuities and limited estates.

14.—(1) The Treasurer, or any other person interested, may within thirty days from the date of the judgment of the Surrogate Judge appeal to a Divisional Court, whose decision shall be final, but no appeal shall lie unless that portion of the property or of the debts and other allowances and exemptions in respect of which such appeal is taken, or all combined, exceeds in value or amount \$10,000 according to such judgment.

Appeal from Surrogate Judge.

Proviso.

Costs.

(2) The costs of all such proceedings shall be in the discretion of the Court or Judge and shall be on the County Court scale, except the costs of an appeal, which shall be according to the tariff applicable to proceedings in the Supreme Court. 9 Edw. VII. c. 12, s. 14.

Duty payable
within 18
months from
death of
deceased.

15.—(1) The duty imposed by this Act, unless otherwise herein provided, shall be due at the death of the deceased, and payable within eighteen months thereafter, and if the same, or any part thereof, is paid within that period, no interest shall be charged or collected thereon, but if not so paid, interest at the rate of five per centum per annum from the death of the deceased shall be charged and collected upon the amount remaining from time to time unpaid, and such duty, or so much thereof as remains unpaid, with interest thereon, shall be and remain a lien upon the property in respect of which it is payable until paid. Provided that the duty chargeable upon any legacy given by way of annuity, whether for life or otherwise, may be paid in four equal consecutive annual instalments, the first of which shall be paid before the fall- ing due of the first year's annuity and each of the three others within the same period in each of the next succeeding three years, and for non-payment when due interest shall be collected from the date of the maturity of each instalment until paid, and if the annuitant dies before the expiration of the four years, payment only of the instalments which became due before his death shall be required.

Extension of
time by order-
in-council.

(a) The Lieutenant-Governor in Council, upon proof to his satisfaction that payment of the duty within the time limited by this subsection would be un- duly onerous, may extend the time for the pay- ment to such date and upon such terms as may be deemed proper.

Interest
allowed for
prepayment.

(b) For payment before the time provided for in this section the Treasurer may allow to the person accountable for the duty, interest at a rate not exceeding three per centum per annum upon the amount so paid. 10 Edw. VII. c. 6, s. 2, *part*.

Time for pay-
ment of duty
where income
accumulated.

(2) Where the whole or any part of the income or interest of any property is directed to be accumulated for any period for the benefit of any person or persons or class to whom or to any of whom at the expiration of such period such property passes, or income, or interest, becomes payable, such property shall be deemed for the purpose of this Act an interest in possession, passing at the death of the deceased, and the duty thereon shall be payable within eighteen months thereafter.

Where person
has general
power of
appointment.

(3) Property passing upon the death in respect to which any person is given such a general power to appoint, as is mentioned in clause (g) of subsection 3 of section 7 shall be

liable to duty and the duty thereon shall be payable in the same manner and at the same time as if the property itself had been given to the donee of the power.

(4) When the duty or any part thereof has been paid or secured to the satisfaction of the Treasurer he shall, if required by the person accounting for the duty, give a certificate to that effect which shall discharge from any further claim for such duty the property mentioned in the certificate; provided the Treasurer shall not be bound to grant such certificate until the expiration of one year from the death of the deceased.

Certificate of discharge to be given by Provincial Treasurer.

(5) Such certificate shall not discharge any person or property from the duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property, in respect of which duty has been already accounted for; provided that a certificate purporting to be a discharge of the whole duty payable in respect of any property included in the certificate shall exonerate from duty property in the hands of a *bona fide* purchaser for valuable consideration without notice.

Certificate not a discharge in case of fraud, etc.

Except as to bona fide purchaser.

9 Edw. VII. c. 12, s. 15 (2-5).

16.—(1) Where the dutiable property includes any interest in expectancy the duty on such interest may be paid within the eighteen months limited by subsection 1 of section 15, and when so paid the duty shall be on the value of such interest ascertained as provided herein as at the death of the deceased.

Time for payment of duty on interest in expectancy.

(2) With the consent in writing of the Treasurer, the duty may be paid after the time so limited and before such interest comes into possession; but if such consent is given the duty shall then be on a value not less in any event than the value of such interest in expectancy ascertained as provided herein as at the date when the duty is paid; and no deduction shall be made by reason of duty paid or payable on any prior estate, income or interest.

Payment after time limited.

(3) The duty on any interest in expectancy, if not sooner paid, shall be payable forthwith when such interest comes into possession, in which case the duty shall be on the value ascertained as provided herein as at the date of coming into possession; and no deduction shall be made by reason of duty paid or payable on any prior estate, income or interest; and if such duty is not so paid, interest at the rate of five per cent. shall be charged and collected thereon from the date when such interest in expectancy came into possession.

Payment forthwith when interest in expectancy falls into possession.

(4) Subject to the provisions of subsection 2 of section 15, where any property so passes that no person is beneficially

Where no person presently beneficially entitled.

entitled to the present enjoyment of the income or any part thereof for any term of years, or other period, whether certain or uncertain, the duty shall be payable on the present value of such income or part thereof for such term or period computed as provided by section 13 and shall be payable within eighteen months after the death of the deceased.

Commutation
of duty.

(5) Notwithstanding that the duty may not be payable under this section until the time when the right of possession or actual enjoyment accrues, an executor or person who has the custody or control of the property, may, with the consent of the Treasurer, commute the duty which would or might, but for the commutation, become payable in respect of such interest in expectancy, for a certain sum to be presently payable, and for determining that sum the Treasurer shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to, and the rate and amount of such duty and interest; and on the receipt of such sum the Treasurer shall give a certificate of discharge from such duty.

Interest in
expectancy
to be charged
with duty paid.

(6) Where the duty on any interest in expectancy has been commuted and paid under the provisions of this section before such interest in expectancy falls into possession the duty so paid shall be charged on such interest in expectancy, and shall be repaid with interest at the rate of four per cent. per annum to the person, who has paid the same by the person entitled to such interest in expectancy at the time when such interest comes into possession.

Composition
by Treasurer
for duty pay-
able in certain
cases.

(7) Where it appears to the Treasurer, that, by reason of the number of deaths on which property has passed or of the complicated or contingent nature of the interests of different persons in property passing on the death, it is difficult to ascertain exactly the rate or amount of duty payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Treasurer on the application of any person accountable for any duty thereon, and upon his furnishing all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may, by way of composition for all or any duty payable in respect of the property or interest and the various interests therein or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears proper and may accept payment of the sum so assessed in full discharge of all claims for duty in respect of such property or interest and shall give a certificate of discharge accordingly. 9 Edw. VII. c. 12, s. 16.

Extension of
time for the
payment of
duty.

17. Upon the application of any person liable for the payment of the duty the Surrogate Judge may from time to time, on notice to the Treasurer, and for just cause shown make

upon such terms as he may deem proper an order extending the time fixed by this Act for payment thereof for any period, in the aggregate not exceeding one year, or with the consent of the Treasurer for a longer period, but, unless the Judge otherwise orders, the duty shall nevertheless bear interest at the rate of five per centum per annum from the day upon which such duty might have been paid without interest. 9 Edw. VII. c. 12, s. 17.

18.—(1) The executor of the deceased shall pay at the time or times mentioned in this Act, to the extent of the property coming into his hands, the succession duty in respect of the property in Ontario and the personalty wheresoever situate, of which the deceased was competent to dispose at his death, and of the existence of which the executor has knowledge, and may pay in like manner the duty in respect of any other property passing on such death, which by any testamentary disposition of the deceased is under the control of the executor, or in case of property not under his control, if the person accountable for the duty in respect thereof requests him to make such payment, and any executor having in charge or trust any estate, legacy, or property in respect of which any duty is payable, shall deduct the duty therefrom, or collect the duty thereon from the person entitled thereto, and he shall not deliver such property to any person until he has collected the duty thereon.

Executor liable to pay duty.

(2) Any person authorized or required to pay the duty in respect of any property shall for the purpose of paying such duty or raising the amount of the duty when already paid, have power whether the property is or is not vested in him, to raise the amount of such duty and any interest and expense properly paid or incurred by him in respect thereof, by sale, mortgage, or lease, of so much of the property as may be necessary for such purpose.

Persons liable to duty may raise same by sale, etc.

(3) Every sum of money retained by an executor or paid into his hands for the duty on any property, shall be paid by him forthwith to the Treasurer, or as he may direct. 9 Edw. VII. c. 12, s. 18.

Duty to be paid to Treasurer.

19. Where any debts shall be proven against the estate of a deceased person, after the payment of legacies or distribution of property from which the duty has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, if such duty has not been paid to the Treasurer, or by the Treasurer if it has been so paid. 9 Edw. VII. c. 12, s. 19.

Refunding duty upon subsequent payment of debts.

20. The Judges and Registrars of the several Surrogate Courts and solicitors practising therein shall be entitled to

Fees of Judges and Registrars.

Rev. Stat.
c. 62.

take for the performance of duties and services under this Act, similar fees to those payable to them for the like services under and by virtue of *The Surrogate Courts Act* and the Surrogate Court rules. 9 Edw. VII. c. 12, s. 20.

Recovery of
succession
duties by
action.

21.—(1) Any duty payable under this Act shall be recoverable with full costs as a debt due to His Majesty from any person liable therefor by action in or on summary application to any court of competent jurisdiction.

Matters to be
determined by
Supreme Court
in action.

(2) The Supreme Court shall also have jurisdiction to determine what property is liable to duty under this Act, the amount of such duty and the time or times when the same is payable, and may itself or through any referee exercise any of the powers conferred upon any officer or person by the said sections.

Action may be
brought before
time for pay-
ment of duty.

(3) An action may be brought for any of the purposes in this Act mentioned, notwithstanding the time for the payment of the duty has not arrived, subject to the discretion of the court as to costs.

Production of
documents,
examination of
witnesses, etc.

(4) In every such action His Majesty's Attorney-General shall have the same right, either before or after the trial, to require the production of documents, to examine parties or witnesses, or to take such other proceedings in aid of the action as a plaintiff has in an ordinary action. 9 Edw. VII. c. 12, s. 21.

Caution.

22. Where duty is claimed in respect of any land, or money secured by mortgage, or charge upon land, the Treasurer may cause to be registered in the proper registry office, or in the proper office of land titles, if the land is registered under *The Land Titles Act*, a caution claiming duty in respect of such land, mortgage, or charge by reason of the death of the deceased, and the land, mortgage or charge, shall upon such registration be subject to the lien of the Crown for duty, but nothing herein contained shall affect the rights of the Crown to a lien independently of the caution. 9 Edw. VII. c. 12, s. 22.

Rev. Stat.
c. 126.

Lieutenant-
Governor in
Council may
make regula-
tions.

23. The Lieutenant-Governor in Council may make rules and regulations for carrying into effect the provisions of this Act, and such rules and regulations shall be laid before the Assembly forthwith, if in session at the date of such rules and regulations, and if not then in session such rules and regulations shall be laid before the Assembly within the first seven days of the session next after the same are made. 9 Edw. VII. c. 12, s. 23.

CHAPTER 25

An Act respecting Law Stamps.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Law Stamps Act*. 9 Edw. Short Title.
VII. c. 13, s. 1.

2. In this Act the words “fees” and “fee” shall mean the Interpretation,
fees and charges mentioned in section 4. 9 Edw. VII. c. 13,
s. 2.

3. The Lieutenant-Governor in Council may direct stamps Issue.
to be prepared for the purposes of this Act, of such denomina- Form, etc.
tions and of such design, form, and colour as he may see fit.
9 Edw. VII. c. 13, s. 3.

4. The stamps shall be used in payment of fees and charges For what pur-
payable to the Crown upon legal proceedings under this or poses stamps
any other Act, and under any Order in Council or rule or shall be used.
order of any court. 9 Edw. VII. c. 13, s. 4.

5. Money shall not be paid to or received by any court, or No money to
any officer of any court, for any fee. 9 Edw. VII. c. 13, s. 5. be received
for such fee.

6. No paper or proceeding upon which a fee is payable to Stamps
the Crown shall be issued, received or acted upon by any affixed.
court, or by any officer of any court, until a stamp for the
amount of such fee has been affixed to the same. 9 Edw. VII.
c. 13, s. 6.

[Under *The Surrogate Courts Act*, Rev. Stat. c. 62,
s. 75, the law stamps for fees payable on a grant of probate
or administration are affixed to the order for the grant. As
to law stamps under *Land Titles Act*, see Rev. Stat. c. 126,
s. 140].

7. Every paper and proceeding upon which a fee is pay- Proceedings
able, and which is not duly stamped, shall, if not afterwards not duly
stamped under the provisions of this Act, be absolutely void. stamped to
and no judge or officer of the court shall allow any action or be void.
step to be taken thereon, although no exception is taken
thereto by any of the parties. 9 Edw. VII. c. 13, s. 7.

Cases of
search, etc.,
provided for.

8. In cases of search, examining and authenticating office copies of papers, and in all other cases in which a document would otherwise not be required, a memorandum in writing shall be produced by the applicant, to which the stamp shall be affixed. 9 Edw. VII. c. 13, s. 8.

No unstamped
process, etc.,
to be served.

9. A sheriff, officer or other person shall not serve or execute any writ, rule, order or proceeding, or a copy thereof, upon which a fee is payable, which is not duly stamped, and, subject to the provisions of section 11, every service and execution contrary to this Act shall be void, and no recompense shall be allowed therefor. 9 Edw. VII. c. 13, s. 9.

When
further
stamp
required.

10. A paper or proceeding which has been duly stamped for the purpose for which it has been used shall not be considered as stamped for any other purpose, where another fee is payable thereon for any other or further use of the same. 9 Edw. VII. c. 13, s. 10.

Supplying
innocent
omission.

11.—(1) A person who has omitted to duly stamp a paper or proceeding may apply to the court or to a judge thereof for leave to have the same duly stamped, and where this Act has not been wilfully violated, the application shall, on such terms as may be deemed proper, be granted for the stamping of such paper or proceeding with stamps of such amount beyond the fee due thereon as may be thought reasonable, not exceeding ten times the amount of the fee.

Retroactive
effect of order.

(2) The affixing of the stamps shall have the same effect as if the paper or proceeding had been duly stamped in the first instance. 9 Edw. VII. c. 13, s. 11.

Duty of
inspector.

12.—(1) Where the officer inspecting legal offices finds a paper or proceeding which should have had stamps affixed to it, not stamped, or insufficiently stamped, he shall require the officer whose duty it was to see that it was properly stamped, to affix to such paper or proceeding stamps of a sufficient amount.

Effect of.

(2) The officer directing stamps to be affixed shall cancel them, and the affixing of such stamps by direction of the officer shall have the same effect as if the paper or proceeding had been duly stamped in the first instance. 9 Edw. VII. c. 13, s. 12.

Duty of
officer
to cancel.

13. When a stamp has been affixed to a paper or proceeding the officer who issues or receives it, shall forthwith cancel the stamp by perforation or in such other manner as the Lieutenant-Governor in Council may direct. 9 Edw. VII. c. 13, s. 13.

Scale of fees
in stamps.

14. Fees payable shall be at the following rates: For fees of ten cents or under, ten cents; from ten cents to twenty

cents, twenty cents; from twenty cents to thirty cents, thirty cents; and so in like manner all other fees which are not multiples of ten cents, at the multiple of ten cents next above the sum to which they amount; except that the fee for examining and authenticating office copies of papers, shall be, when the same do not exceed three folios, five cents, and for every three folios above the first three, an additional five cents, and for any number of folios less than three, above any number of folios divisible by three, the fee for such broken number shall be five cents. 9 Edw. VII. c. 13, s. 14.

Special provision as to charge for office copies.

15. The Treasurer of Ontario shall procure the stamps required under this Act, and shall keep an account of the numbers, denominations and amounts thereof, and of the dates at which they are procured. 9 Edw. VII. c. 13, s. 15.

Supply and account of stamps.

16. The Treasurer, upon payment to him of the proper amount, shall issue such stamps as may be required, and shall keep an account of the numbers, denominations and amounts thereof, and of the dates of issue. 9 Edw. VII. c. 13, s. 16.

Issue of.

17. Subject to the provisions hereinafter contained, the Treasurer may allow to any person who takes at any one time stamps to the amount of \$5 or upwards, a discount not exceeding five per centum. 9 Edw. VII. c. 13, s. 17.

Allowance to be made to purchasers.

18. The Lieutenant-Governor in Council may make arrangements with any person for the exclusive sale of stamps to him in any locality, and for such time as he may think fit, at a discount, not exceeding five per cent., and in such case the Treasurer shall not issue stamps to any other person in the locality specified in the Order in Council. 9 Edw. VII. c. 13, s. 18.

Appointment of vendor of stamps in any locality.

19. Where an arrangement under section 18 is made with any person for the sale of stamps, he shall at all times keep on hand such a supply of the different denominations as may be reasonably expected to be required of him; and shall sell the same to all persons upon payment of the amount of such stamps; and for any violation of this section he shall incur a penalty not exceeding \$20, and shall also be liable for the damages sustained by any person through such violation. 9 Edw. VII. c. 13, s. 19.

Obligations of vendors of stamps.

Penalty.

20. The Lieutenant-Governor in Council may make regulations for an allowance for stamps spoiled or rendered useless or unfit for the purpose intended, or for which the owner may have no immediate use, or which through mistake or by inadvertence may have been improperly or unnecessarily used; and such allowance shall be made either by giving other stamps in lieu of the stamps allowed for, or by repaying the amount thereof, after deducting the discount, if any,

Allowance for stamps spoiled or returned.

allowed on the sale of stamps to the like amount. 9 Edw. VII. c. 13, s. 20.

Penalty for issuing, etc., any writ or proceeding without having it duly stamped.

21. A person who wilfully issues, receives, procures or delivers, or serves or executes any writ, rule, order, paper or proceeding upon which any fee is payable to the Crown without the same having been first duly stamped, shall for the first offence incur a penalty not exceeding \$10, for the second offence not exceeding \$50, and for the third and every subsequent offence \$200; and in default of payment shall be liable to be imprisoned for a period not exceeding one month for the first offence, three months for the second offence, and one year for the third or any subsequent offence, unless in each case the penalty and costs are sooner paid. 9 Edw. VII. c. 13, s. 21.

Penalty for not properly cancelling stamps.

22. A person who omits to cancel any stamp in the manner and at the time hereinbefore provided shall incur a penalty not exceeding \$20. 9 Edw. VII. c. 13, s. 22.

Prima facie evidence of non-stamping.

23. The production of any writ, rule, order, paper or proceeding not stamped, or insufficiently stamped, or the stamp of which is not properly cancelled, or the proof that it was not stamped or sufficiently stamped at the time when it was issued, received, served or executed, or that the stamp was not properly cancelled, shall be sufficient *prima facie* evidence of such writ, rule, order, paper or proceeding having been wilfully issued, received, served or executed without having been first stamped, or without the stamp having been properly cancelled. 9 Edw. VII. c. 13, s. 23.

Recovery of penalties. Rev. Stat. c. 90.

24. The penalties imposed by or under the authority of this Act shall be recoverable under *The Ontario Summary Convictions Act*.

CHAPTER 26.

An Act respecting the Taxation of Mines and Natural Gas.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Mining Tax Act*. Short title.
7 Edw. VII. c. 9, s. 1.

2. In this Act

Interpretation.

- (a) "Mine" shall mean any opening in or working of the ground from or by which metalliferous ore or other solid mineral substance is taken, and shall include the mining claim, mining location, or other the whole parcel of land or mineral in which any such workings are being or have been carried on, but the term "mineral substance" or "mineral workings" shall not include limestone, marl, peat, clay, building stone, or stone for ornamental or decorative purposes, or non-auriferous sand or gravel;
- (b) "Mine Assessor" shall mean and include any officer of such designation appointed under the authority of this Act, and any other officer or person appointed or directed by the Minister to perform any duty or exercise any power or authority by this Act specified or provided to be performed or exercised by a Mine Assessor;
- (c) "Minister" shall mean the Minister of Lands, Forests and Mines;
- (d) "Output" when used in reference to a mine shall mean all ores or other solid mineral or mineral-bearing substances raised, taken or gained from any mine or land in Ontario, and which have been sold, or have been removed from the mining premises where produced, or have been treated or partially treated at any smelter, mill, or refinery on the mining premises from which they were taken;
- (e) "Person" shall include corporation, company, syndicate, trust, firm, partnership, co-owners, or party, and the heirs, executors, administrators, or other

legal representatives of such person if the context can apply thereto;

"Preceding year."

(f) "Preceding Year" shall mean the year ending on the 31st day of December next, before the time when the taxes hereby imposed are payable. 7 Edw. VII. c. 9, s. 2.

IMPOSITION, ACCRUAL AND PAYMENT OF TAXES.

Tax to be paid to Crown.

3. Notwithstanding anything in any other Act, or in any regulation or law, there shall be paid to His Majesty for the uses of Ontario in and for each and every year, at the time and in the manner hereinafter provided, the several taxes in this Act specified. 7 Edw. VII. c. 9, s. 3.

Accrual of tax.

4. The taxes imposed by this Act shall be deemed to accrue on the first day of January of the year in which the same are payable, and shall become payable on the first day of October in each year and shall be paid to the Minister. 7 Edw. VII. c. 9, ss. 4 and 5.

And...

PART I.

Tax on profits.

5.—(1) Every mine in Ontario, the annual profits of which exceed \$10,000 shall be liable for and the owner, manager, holder, tenant, lessee, occupier, and operator of the same shall pay an annual tax of three per centum on the excess of annual profits of such mine above the said sum of \$10,000.

Mines worked together.

(2) For the purpose of this section all mines and mineral workings in Ontario occupied, worked or operated by the same person, or under the same general management or control, or the profits of which accrue to the same person, shall, for the purpose of determining whether there is liability to taxation hereunder, be deemed to be and be dealt with as one and the same mine, and not as separate mines.

Ascertainment of profits.

(3) The annual profits shall be ascertained and fixed in the following manner, that is to say: The gross receipts from the year's output of the mine, or in case the ore, mineral or mineral-bearing substance or any part thereof is not sold, but is treated by or for the owner, tenant, holder, lessee, occupier, or operator of the mine upon the premises or elsewhere, then the actual market value of the output, at the pit's mouth, or if there is no means of ascertaining the market value, or if there is no established market price or value, the value of the same as appraised by the Mine Assessor, shall be ascertained, and from the amount so ascertained the following, and no other, expenses, payments, allowances, or deductions, shall be deducted and made, that is to say:

Deductions.

(a) The actual cost of transportation of any output sold if paid or borne by the owner, tenant, holder, lessee, occupier, or operator;

- (b) The actual and proper working expenses of the mine, both underground and above ground, including salaries and wages of necessary superintendents, captains, foremen, workmen, firemen, engine-men, labourers, and employees of all sorts employed at or about the mine, together with the actual and proper salaries and office expenses for necessary office work done at the mine, and in immediate connection with the operation thereof;
- (c) The cost of supplying power and light, and of hire of horses used in the mining operation or in handling the ore or mineral;
- (d) The actual cost price of food and provisions for all employees aforesaid, whose salaries or wages are made less by reason of being furnished therewith, and of fodder for horses used as above mentioned;
- (e) The actual cost price of explosives, fuel, and any other supplies necessarily consumed in the mining operations;
- (f) Any actual and proper outlay incurred in safeguarding or protecting the mine or mineral product;
- (g) The cost of proper insurance upon the output if paid or borne by the owner, tenant, holder, lessee, occupier, or occupant and upon the mining plant, machinery, equipment, and buildings used for or in connection with the actual mining operations or for storing the ore or mineral;
- (h) An allowance of a sum for annual depreciation, by ordinary wear and tear, of the said plant, machinery, equipment, and buildings, such sum to be based upon the probable annual average cost of repairs and renewals necessary to maintain the same in a condition of efficiency, and in no case to exceed for any year ten per centum of the value at the commencement of such year, such value to be appraised by the Mine Assessor. 7 Edw. VII. c. 9, s. 6, *part*.
- (i) The cost of actual work done in sinking new shafts, making new openings, workings, or excavations of any kind, or of stripping or trenching, in or upon the lands upon which the mine is situated, or upon any other lands belonging to the same owner, lessee, holder, tenant, occupier, or operator, in Ontario, such work having for its object the opening up or testing for ore or mineral. Provided, however, that such expenditure is *bona fide*, and actually made or borne by the person or persons liable, or who would but for this provision be

liable to taxation upon the said mine under this Act, and that separate accounts of such expenditure are kept and an affidavit or affidavits giving reasonable details of the nature, extent, and location of such work shall be furnished to the Bureau of Mines with the annual statement hereinafter provided for. 7 Edw. VII. c. 9, s. 6, *part.* 8 Edw. VII. c. 15, s. 1.

Capital not deducted.

(4) No allowance or deduction shall in any case be made for cost of plant, machinery, equipment, or buildings, nor for capital invested, nor for interest or dividend upon capital, or stock or investment, nor for depreciation in the value of the mine, mining land, or mining property by reason of exhaustion or partial exhaustion of the ore or mineral, but this shall not restrict the generality of anything hereinbefore in this section contained.

Based on preceding year.

(5) For the purpose of this section, unless a contrary intention appears, the operations, business, matters, and things carried on, occurring, or existing during the preceding year shall be taken as the basis of fixing, assessing, and ascertaining the taxation hereunder, but the tax payable shall nevertheless be deemed to be a tax for the calendar year in which it is payable. 7 Edw. VII. c. 9, s. 6, *part.*

Duty to give notice of active operations.

6.—(1) The owner, lessee, tenant, holder, occupier, manager, and operator of every mine from which ore, minerals, or mineral-bearing substances is or are being taken, shall within ten days after the commencement of such active operations, notify the Bureau of Mines of the fact that such mine is in active operation, and shall give in such notice the name of the mine, and the name and address of the owner, lessee, tenant, holder, occupier, manager, and operator of such mine, and the name and address of the manager, or of some other person, to whom notices to be given under this Act may be sent (to be known as the name and address for service), and shall forthwith notify such bureau of every change in the name and address of such manager or person, and of every change in the ownership, holding, tenancy, management, occupation, or operation of such mine, and of every discontinuance of active operations, and of every recommencement thereof after discontinuance.

List of mines.

(2) From the information so given, and from any other available source, the Bureau of Mines shall prepare and keep a list showing all operating mines in Ontario, with the names and addresses and particulars as so notified and given (keeping in a distinct and separate column or place the name and address for service), and any notice or requisition required or provided for by this Act shall be deemed to have been properly and sufficiently given, and served if mailed by registered letter to the person whose name and address for service have been given, at such address, or, in case such a

name and address be not so notified, then if mailed by registered letter to the address which the official or person sending the notice or requisition thinks most likely to reach the proper person. 7 Edw. VII. c. 9, s. 7.

7. No person shall ship, send, take, or carry away, or permit to be shipped, sent, taken, or carried away from the mine from which the same has been taken, any ore, mineral, or mineral-bearing substance, or any product thereof, until such person has notified the Bureau of Mines that the mine from which the same has been taken is in active operation. 7. Edw. VII. c. 9, s. 8.

Shipping
forbidden
before notice.

8.—(1) Every person liable to pay the tax imposed by section 5 shall, without any notice or demand to that effect, in addition to any other statements which may otherwise be required, on or before the first day of March in every year, deliver to the Bureau of Mines a detailed statement in which shall be set forth:

Statement to
be furnished.

- (a) The name and description of the mine;
- (b) The name and address of the person or persons owning, holding, leasing, managing, occupying and operating the same;
- (c) The quantity of ore, minerals, and mineral bearing substances shipped or sent from or treated on the mining premises during the year ending 31st December last preceding;
- (d) The name or names of the smelter or mill and locality to which the same or any part thereof was sent;
- (e) The cost per ton for transportation to the smelter, refinery, or mill, and actual, proper, and necessary expenses of making sale, if any, and by whom paid or borne;
- (f) The cost per ton for smelter or mill charges, and by whom paid or borne;
- (g) The quantity of ore, minerals, and mineral-bearing substances treated on the mining premises during the said year;
- (h) The value of the ore, minerals, and mineral-bearing substances shipped after deducting the charges for making sales, and for transportation or for treatment;
- (i) The value of the ore, minerals, and mineral-bearing substances treated on the mining premises. 7 Edw. VII. c. 9, s. 9 (1), *part*; 8 Edw. VII. c. 15, s. 2;

And such statement shall also show in another column or columns, with reasonable detail, the various expenses, payments, allowances, and deductions which are proper to be made under the provisions of subsection 3 of section 5; and such statement shall show by way of summary the total receipts or market value at the pit's mouth of the year's output, as in this Act specified, and the total amount of expenses, payments, allowances, and deductions proper under this Act to be deducted therefrom, and the balance of profits for the year as in this Act provided, and may also show the amount or approximate amount of municipal income tax to be deducted under the provisions of section 14.

Statement to
be attested on
oath.

(2) Such statement and information required by this section shall be made and furnished by and under the oath of the owner, manager, holder, lessee, tenant, occupier, or operator of such mine; but the Bureau of Mines or any mine assessor may require such information and statement, or any part thereof, to be given or verified under oath by any other or others of such persons, or by any person connected with the ownership, operation, or management of any such mine, and may in addition to the particulars above detailed require any other information, particulars, or statements that may be thought expedient, and such requisition or requisitions may be made at any time or times the same may be deemed proper.

Extension
of time.

(3) The Minister may enlarge the time for making such return or statement. 7 Edw. VII. c. 9, s. 9 (2), (3).

Books to be
kept.

9.—(1) Every person liable to pay the tax imposed by section 5, shall keep, at or near the mine, proper books of account of the ore, minerals, or mineral-bearing substances taken from the said mine, containing the quantity, weight, and other particulars of the same and the value thereof, and showing the returns from the smelter, mill, or refining works, or other returns of the amounts derived from the sale of such ores, minerals, and mineral-bearing substances; and no ore, mineral or mineral-bearing substance taken out of any mine shall be removed therefrom or treated at any smelter, mill or refining works until the weight thereof shall have been correctly ascertained and entered in the said books of account; and such person shall also keep proper books showing each of the several expenses, payments, allowances or deductions mentioned in subsection 3 of section 5, and showing any other facts and circumstances necessary or proper for ascertaining the amount of the tax payable under section 5.

Power of Mine
Assessor as to
books.

(2) If any doubt arises as to where such book or books shall be kept, or as to how many, or what books shall be kept, the Mine Assessor shall determine the number and character of books to be kept and the place or places at which they shall be kept. 7 Edw. VII. c. 9, s. 10.

MINE ASSESSOR AND HIS DUTIES.

10. The Lieutenant-Governor in Council may from time to time appoint one or more officers under this Act, to be known as a Mine Assessor or Mine Assessors, and the Minister may from time to time appoint any officer or person to perform for the time being, or to perform in any locality or in any special matter or case the duties of Mine Assessor, and every such officer or person shall be deemed an officer of the Bureau of Mines, and it shall be his duty, subject to the direction of said Minister, annually, and oftener if so required, to prepare lists and descriptions of and ascertain and report the facts and particulars concerning all mines, mining properties, and mining rights liable, or which might be liable, to taxation under this Act, and to furnish the same to the Bureau of Mines, and to make such investigations, and perform such other duties as are provided for by this Act, or as may be prescribed by the said Minister. 7 Edw. VII. c. 9, s. 11.

Mine assessor
and duties.

11. It shall be at all times lawful for any Mine Assessor to enter upon mining premises for the purpose of making enquiries, obtaining information, and otherwise performing his duties under this Act, and for any of these purposes he may descend all pits and shafts and use all tackle, machinery, appliances, and things belonging to the mine as he shall deem necessary or expedient, and he shall have free ingress and egress to, from, and over all buildings, erections, and vessels used in connection with the workings, and he shall from time to time be allowed to take from the said mining premises such samples or specimens as he may desire for the purpose of determining by assay or otherwise the value of the ore, minerals, or mineral-bearing substances being taken therefrom, or any product thereof, and he shall have full and complete access to all books of account and letters kept or used for or in connection with the work and business of such mine, and may examine the same and take copies thereof or extracts therefrom, but any information of a private or confidential nature acquired by any Assessor under the provisions of this section shall not be communicated or disclosed to anyone except so far as may be necessary for the purposes of this Act. 7 Edw. VII. c. 9, s. 12.

Assessor may
enter mines.

TAX ROLLS AND APPEALS.

12.—(1) The Bureau of Mines or any Mine Assessor or other officer or person acting under the direction of the Minister in that behalf shall, as soon as practicable after the receipt of the returns and statements mentioned in section 8, prepare from them and from the lists, statements and reports of the Mine Assessor a tax roll showing all mines and persons liable for the taxes imposed by section 5, and showing the

Preparation of
tax roll.

quantity and value of output for each mine, the amount of deductions therefrom under the various headings as far as practicable, the profits for which each mine and person is assessable, and the amount of tax payable by each, also any deduction entitled to be made therefrom by reason of payment of municipal income tax. In making up the roll the statement furnished pursuant to section 8 shall be *prima facie* evidence of the information required; but any default or defect in the furnishing of such statement or any omission therefrom shall not prevent the complete preparation of the roll, but in all cases the officer or person charged with the duty of preparing said roll may, subject to the approval of the Minister, make full and careful enquiry as to the correctness thereof, and may resort to all available sources of information within his control, and may make or order a Mine Assessor to make any investigation he deems fit, and may fix such amount as he believes to be just and correct; provided that whenever a mine or person is assessed for a larger sum than the statement shows liability for, notice thereof shall be given to such person, and such person shall be entitled within fifteen days from the mailing of such notice to appeal from the said assessment as hereinafter provided.

Appeals.

(2) When the time for filing such appeal has expired, the cases appealed shall be marked or distinguished from the others on the said roll, and the roll shall thereupon be made up in duplicate, and the Minister shall by his signature authenticate the same as being the roll for the year, and subject to the determination of such appeals, and subject to any additions or alterations that may be made by or pursuant to any investigation that may be ordered or directed as hereinafter provided for, the said roll shall be final and conclusive as to the liability of the several mines and persons therein mentioned to pay the tax therein specified.

Notice of appeal.

(3) An appeal, as provided for in the first subsection of this section, shall be made by lodging with the Bureau of Mines within the time limited a notice in writing, stating that the appellant thereby appeals from the tax in question, and stating as far as practicable the grounds of such appeal or the particulars of objection to the tax, and such appeal shall be referred in writing by the Minister to the Mining Commissioner or to the Ontario Railway and Municipal Board, to be tried and determined.

Investigation in lieu of appeal.

(4) The Minister, if in any case he sees fit, instead of having the amount of the tax for any mine or person entered on the roll, as in the first paragraph of this section mentioned, may direct in writing that the amount of the tax for which such mine or person is liable shall be ascertained and fixed by the Mining Commissioner or by the Ontario Railway and Municipal Board; and the said Minister may at any time either before or after the said roll is made up and signed, and

whether or not the mine or person in question is entered thereon for taxation, direct in writing that the truth or correctness of any statement furnished pursuant to section 8 of this Act, or that the question of liability or amount of liability of any mine or person for the tax under this Act, shall be enquired into and investigated and reported upon by the Mining Commissioner or the Ontario Railway and Municipal Board.

(5) The Mining Commissioner or Ontario Railway and Municipal Board shall upon receiving any such direction or reference as in subsection 3 or subsection 4 of this section mentioned, proceed to try and dispose of the appeal, or determine or enquire into and investigate the question or matter so referred or directed to be investigated, and for all and any of said purposes shall have the same power to enforce the attendance of witnesses, and to compel them to give evidence, and produce documents and things, as is vested in any court in civil cases, and the decision, finding, or report of the Mining Commissioner or Ontario Railway and Municipal Board, after giving the parties an opportunity to be heard, shall for the purposes of this Act be final and conclusive as to the particulars therein mentioned, subject only as hereinafter in this section provided.

(6) In any such proceedings or investigation, or on any appeal, the Mining Commissioner or the Ontario Railway and Municipal Board may order the appellant, or the person causing the investigation by reason of false or incorrect statements, or failure to keep books and accounts or to otherwise conform to the provisions of this Act, to pay the costs of such appeal, proceeding or investigation, and may direct that the same be taxed by a taxing officer of the Supreme Court and added to the tax for which such person is liable under this Act; and in any case where the statement filed or furnished, pursuant to section 8, understates the amount on which the tax should be paid, the person making such false or incorrect statement shall pay double the tax to which he would otherwise be liable; but if it shall appear to the Mining Commissioner or the Ontario Railway and Municipal Board, and he or they certify that such understatement was not made with the intent or for the purpose of decreasing the amount of tax to be paid, but was made in good faith and with no improper motive, then in such case the Lieutenant-Governor in Council may, upon the recommendation of the Minister, remit so much of the added percentage and so much of the costs as may in his discretion seem just.

(7) All decisions, findings, and reports made pursuant to the last preceding subsection shall be filed with the Bureau of Mines, and notice of such filing shall forthwith thereafter be mailed by said Bureau of Mines to the owner or manager of the mine concerned.

Appeal to
Divisional
Court.

(8) In any case where the amount of the tax involved exceeds \$1,000 an appeal shall lie from any decision, finding or report of the Mining Commissioner or the Ontario Railway and Municipal Board under this section to a Divisional Court; provided that notice of such appeal is lodged with the Bureau of Mines within fifteen days after the filing of said decision, finding, or report with the Bureau of Mines, and the procedure upon and governing such appeal shall be, as far as may be, the same as upon an appeal to a Divisional Court in an action, but leave shall not be necessary, and the decision of that Court shall be final. 7 Edw. VII. c. 9, s. 13.

Notifying of
tax.

13. It shall be the duty of the Bureau of Mines, or the person charged with the collection of any tax imposed by section 5 to notify the owner or manager of the mine liable for such tax of the amount and time for payment thereof at least fifteen days prior to such date; but failure to comply with this provision shall not affect the liability for payment of any such tax at the time and in the manner in this Act provided; nor shall it prevent or affect the collection or enforcement thereof or the happening of any forfeiture or accrual of percentage or penalty for non-payment, or any other matter or thing whatsoever in this Act provided. 7 Edw. VII. c. 9, s. 14.

INCOME TAX MAY BE DEDUCTED.

Allowance for
income tax
paid to
municipality.

14.—(1) When any person liable to payment of a tax under section 5 in respect of any mine is also during the same year in which such tax is payable liable for and paying to the municipality or municipalities in which such mine is situate an income tax upon income derived from such mine he shall be entitled to deduct from the amount of tax payable under that section the amount of such municipal income tax; provided that the amount which he shall be so entitled to deduct shall in no case exceed one-third of the amount of the tax for which he is liable under that section; and provided further that notice of the amount and proof of the liability for and payment of such municipal income tax is furnished to the Mine Assessor at such time and in such manner as he may require.

Deduction of
income tax
in Cobalt.

(2) Notwithstanding subsection 1 any person liable to pay a tax under section 5 in respect of any mine in the Town of Cobalt as constituted on the 14th day of April, 1908, shall be entitled to deduct from the amount payable under that section the amount of the municipal income tax levied by the town, but the amount which he shall be so entitled to deduct shall in no case exceed one-half of the amount of the tax for which he is liable under that section. 8 Edw. VII. c. 15, s. 3.

Maximum
deduction for
municipal
income tax
defined.

(3) The one-third and one-half herein mentioned as the maximum deduction for municipal income tax shall mean one-third or one-half, as the case may be, of the amount or part

only of the tax under section 5 which arises from or is referable to the mine or mineral workings or part thereof actually situate within the municipality to which the municipal income tax is payable, notwithstanding that another part of what is under that section liable to taxation as a single mine exists outside the municipality; and the Mine Assessor may at all times require any additional statements or returns to be made that he may deem necessary for fixing the portion of tax referable to the municipality. 9 Edw. VII. c. 14, s. 1.

ACREAGE TAX.

15.—(1) Except as hereinafter provided,

Acreage
tax.

- (a) Every mining location and mining claim in unorganized territory in Ontario, held either mediately or immediately under patent granted or lease issued by the Crown under or pursuant to the provisions of any statute, regulation, or law at any time in force, authorizing the granting or leasing of Crown lands for mining purposes; and
- (b) All mining rights, whether of all kinds or only one or more kinds of mines or minerals howsoever granted or acquired, owned, or held under lease, agreement, or option, in any lands in any unorganized territory in Ontario, by any person not owning the surface rights in said lands;

shall be liable for, and the owner, holder, lessee and occupier thereof shall pay an acreage tax of two cents per acre in each year.

(2) No such tax shall be payable in respect of such acreage as was during the preceding year actually and *bona fide* in use for farming purposes, or occupied by buildings, or reasonably required or used in connection with such farming or buildings; but this subsection shall not operate to exempt from taxation mining rights held apart from the surface rights as described in clause (b) nor shall there be any right to exemption unless a claim for such exemption has been made, and proof by affidavit or otherwise of the facts has been furnished, to the Bureau of Mines not later than the first day of March of the year in which the tax is payable, nor unless such claim for exemption shall have been approved in writing by the Mine Assessor.

Farmed land
exempt.

Proviso.

(3) No tax shall be payable under this section upon any separate tract or parcel of land not separated for the purpose of avoiding the tax, which comprises less than 10 acres.

Acreage tax
not to be pay-
able on parcel
of less than
ten acres.

(4) The decision of the Mine Assessor as to the right of exemption under this section shall be final and conclusive. 7 Edw. VII. c. 9, s. 16; 8 Edw. VII. c. 15, s. 4; 1 Geo. V. c. 17, s. 63.

Finality
of Assessor's
decision.

School trustees in unorganized districts to make list.

16.—(1) The trustees of every school section in unorganized territory in Ontario, shall prepare a list of all mining locations, mining claims, mining rights, and other lands within their school section liable to said acreage tax, which shall be signed and certified by their Secretary or Secretary-Treasurer, and shall forward the same to the Bureau of Mines on or before the 30th day of April in each year.

Payment to school trustees of one-half of acreage tax.

(2) There shall be paid by the Treasurer of Ontario to the said trustees for school purposes each year one-half of the amount certified by the Deputy Minister of Mines to have been actually received by Ontario for such acreage tax within said school section during the year, and it shall be the duty of the said Deputy Minister each year to certify such sum. 7 Edw. VII. c. 9, s. 17.

ACREAGE TAX ROLL.

Acreage tax roll.

17.—(1) From the lists furnished as in the last preceding section provided, from lists and information prepared by the Mine Assessor, and from records in the Bureau of Mines and in the Department of Lands, Forests and Mines, and any other source of information, the Deputy Minister of Mines, or any assessor charged with such duty, shall prepare each year a tax roll of properties and persons liable to the acreage tax imposed by section 15, but such roll shall at all times be subject to corrections or additions.

Correction of errors.

(2) Any omissions or errors in such roll may by any person be notified to the Bureau of Mines, and may at any time be supplied or corrected. 7 Edw. VII. c. 9, s. 18.

Liability for tax though not on roll.

18. Notwithstanding anything in the last preceding section, every person and property liable under section 15 for payment of acreage tax shall be and continue so liable whether entered in such roll or not, and said tax shall without any notice or demand be payable at the time and in the manner by this Act provided. 7 Edw. VII. c. 9, s. 19.

Disputes and appeals.

19. In case of any question or dispute arising as to the liability of any person or property to the tax under section 15, the Minister may in writing refer such dispute or question to the Mining Commissioner or the Ontario Railway and Municipal Board, and thereupon all the provisions of subsections 5, 6, and 7, of section 12 shall as far as may be apply thereto. 7 Edw. VII. c. 9, s. 20.

Procedure to enforce claim for payment of taxes by one co-owner against another.

20.—(1) Where lands liable to acreage tax under section 15 are held by two or more co-owners and the whole of the taxes have been paid by one or more of such co-owners, and the other co-owner or co-owners have neglected or refused to pay his or their proportion of such taxes for a period of six years, the co-owner or co-owners who have paid such taxes

may apply to a Judge of the High Court Division for a summons directed to the delinquent co-owner or co-owners, calling upon him or them to make payment of the proper proportion of such taxes, to the co-owner or co-owners who have paid the same, within three months from the date of such summons.

(2) The summons shall be served in such manner as the said Judge shall direct, and if upon the return thereof it shall appear that payment has not been made in accordance therewith, the Judge may make an order vesting the interest of the delinquent co-owner or co-owners in the co-owner or co-owners who have paid the taxes, and such order shall be registered in the proper registry or land titles office.

Service and
return of
summons;
order of
Judge.

(3) In this section "co-owner or co-owners" shall include "co-lessee or co-lessees." 1 Geo. V. c. 17, s. 3.

Interpretation
"co-owner."

FORFEITURE FOR NON-PAYMENT.

21.—(1) The Deputy Minister of Mines shall prepare annually a list of all mines, mining locations, mining claims, mining lands and other lands and minerals in respect of which any tax by this Act imposed is two years or more in default, and, with the approval of the Minister, he shall cause a list of the mines, mining locations, mining claims, mining land or lands or mineral rights in respect of which taxes are in arrear to be advertised in four successive issues of the *Ontario Gazette* and in one newspaper, if any, published in the district or county in which the property is situate, stating that unless the amount due with costs and expenses shall have been paid on or before a date to be in said advertisement specified, which day shall be either the 30th of June or the 31st of December, not less than six months nor more than a year after the first publication of said advertisement, said property shall upon the next day following the day so fixed become forfeited to and revested in the Crown. 7 Edw. VII. c. 9, s. 21 (1).

Forfeiture for
non-payment
of tax.

Advertise-
ments.

(2) If the taxes due, with costs and expenses, or any part thereof, remain unpaid until within four months of the day so fixed, the Deputy Minister shall, not later than two months prior to such day, mail or cause to be mailed by registered post to the person appearing from search or inquiry at the Registry or Land Titles Office to be the owner or last known owner of each property so in default, at what appears to the Deputy Minister to be the address or last known address of such person so far as he can reasonably ascertain it, notice specifying the total amount of taxes, costs, expenses, and penalties due or payable under this Act in respect of such property and stating that unless the same is paid on or before the day so fixed the property will be forfeited; and to the amount otherwise payable under this Act there shall in every such case be added and shall be paid as costs of such notice the sum of \$5 for each parcel of property. 1 Geo. V. c. 17, s. 4.

Notice to
persons in
default.

Forfeiture.

(3) If after publication of such advertisement payment of the tax due in respect of any mine, mining location, mining claim, mining land, or other land or mining rights in said advertisement mentioned or described, together with all additions, penalties, and costs and the costs of advertising, is not made on or before the day fixed in said advertisement as the last day for payment, then on the next succeeding day after the day so fixed, or at any time thereafter the Minister may by a certificate under his hand and seal of office declare that such mine, mining location, mining claim, mining land, or other land or mining rights shall, notwithstanding anything in this Act or any other Act, law or regulation contained, be forfeited to and vested in the Crown in right of the Province, and that the patent or lease whereby the said mine, mining location, mining claim, mining lands or other lands or mineral rights was or were granted or leased by the Crown or other title under which they are held is revoked and cancelled, and thereupon the premises comprised therein shall vest in the Crown absolutely freed and discharged from every estate, right, title, interest, claim, or demand therein or thereto, whether existing, arising or accruing before or after such forfeiture shall be so declared.

Forfeited land
not open to
location.

(4) No land or mining rights forfeited and vested in the Crown under this section shall be open to location, staking, or recording as a mining claim unless and until declared so open by Order in Council.

Registration
of certificate
of forfeiture.

(5) The Registrar of any Registry Division in which any lot or parcel of land or mining rights included in a certificate of forfeiture given under this Act is or are situate, or the Local Master of Titles, as the case may be, to whom the said certificate or any exemplification or certified copy thereof is tendered for registration shall duly receive and register the same against the land affected thereby.

Certificate
evidence.

(6) Such certificate shall, upon production, without proof of authenticity, or of the official character of the person signing the same, and any exemplification thereof certified by the Deputy Minister of Mines, shall, without proof of the signature of the Deputy Minister, be received as evidence in any Court, and the same, or any recital of forfeiture contained in any subsequent patent or lease of the said lands or mining rights issued thereafter, shall in any Court be absolute and conclusive evidence of the forfeiture to the Crown of the land so certified, declared, or recited to have been forfeited. 7 Edw. VII. c. 9, s. 21 (2-5).

Office of
registration
of certificate.
Rev. Stat.
c. 124.

(7) When any such certificate has been or shall hereafter be registered, *The Registry Act* shall cease to apply to the land affected thereby, and the Registrar shall in his abstract index in red ink note the fact. 1 Geo. V. c. 17, s. 51.

22. In case any doubt or dispute arises as to the liability of any person to pay a tax or any portion of a tax demanded under this Act, or where owing to special circumstances it is deemed inequitable to demand payment of the whole amount imposed under this Act, the Minister may compromise the matter by the acceptance of such amount as he may deem proper; and in case the tax claimed has been paid under protest, he may refund the same or any part thereof to the person making such payment. 7 Edw. VII. c. 9, s. 22.

Compromise
of tax.

23. Where by any agreement heretofore made between the owner, holder, tenant, lessee, occupier, or operator of a mine and the Crown it is agreed that no tax shall be paid, such mine shall be exempt from the profit tax and acreage tax imposed by this Act. 7 Edw. VII. c. 9, s. 24.

Mine under
agreement
exempt.

PART II.

NATURAL GAS.

24.—(1) All natural gas in Ontario shall be subject to a tax of two cents for every thousand feet flowing, drawn, or pumped from or produced by the well, but natural gas used for ordinary domestic purposes by the owner or occupier of the land on which the well producing the same is situate, or so used by two or more persons from a well jointly sunk by them for their own use on land owned by one or more of them, shall not be subject to such tax, except where the same exceeds five dollars in amount. 7 Edw. VII. c. 9, s. 25; 8 Edw. VII. c. 15, s. 5.

Natural gas
subject to tax.

Exception.

Tax on over-
flow of natural
gas.

(2) Where oil in paying quantities and natural gas in considerable volume are found in the same well, such gas shall not be subject to the provisions of subsection 3 be subject to the tax imposed by subsection 1.

Where oil and
natural gas
found in same
well.

(3) Upon the application of any person who alleges that there is a demand for such natural gas and has offered to purchase the supply and to compensate the owner for it and for any stoppage or diminution in the flow of oil consequent thereon, or who alleges that the escape of such natural gas should be shut off and that he is willing to compensate the owner therefor and for any stoppage or diminution in the flow of oil consequent thereon, and satisfies the Lieutenant-Governor in Council that the price which has been offered and compensation proposed are reasonable, the Lieutenant-Governor in Council may direct that if the owner within and at such times and upon such terms and conditions as the Lieutenant-Governor in Council shall prescribe does not supply such natural gas or allow the same to be taken by the applicant or shut the same off, as the case may be, such natural gas shall be subject to the tax imposed by this Act, and if the owner does not comply with and conform to such direction to the satisfaction of the Lieutenant-Governor in

When natural
gas although
in same well
as oil may
be taxed.

Council such natural gas shall be subject to the tax accordingly.

Obtaining
oil and
precautions
against
wasting gas.

(4) Upon the report of the Minister that it appears to him that oil and natural gas exist in considerable quantities in any described locality, and that it is practicable to pump the oil therefrom without wasting the gas upon proper precautions being observed in drilling wells therein and operating same, the Lieutenant-Governor in Council may by proclamation set apart such locality or any part thereof and may make regulations as to the methods to be adopted in drilling or sinking wells for oil or gas therein, and as to the precautions to be taken for preventing the waste of such gas, and thereafter no person shall drill or sink wells for oil or gas in the locality described in the proclamation, except under and subject to such regulations, and except upon notice in writing to the Minister of his intention to sink such wells.

Proclamation
and
regulations.

Revoking
same.

(5) The Lieutenant-Governor in Council may at any time and from time to time revoke any such direction, proclamation or regulations. 10 Edw. VII. c. 26, s. 30.

Books to be
kept.

25. The owner, lessee, tenant, operator, or occupier of every well shall keep a book continuously at some place in Ontario to be fixed by the Mine Assessor, in which shall be truly and faithfully recorded the total quantity of gas flowing, drawn, or pumped from, or produced by the well or wells operated by him. 7 Edw. VII. c. 9, s. 26 (1).

Inspection of
apparatus.

26.—(1) The Mine Assessor shall have the right, at any and all times, and from time to time, as often as he shall think fit, to inspect all apparatus and machinery used in connection with the well, for the purpose of estimating or ascertaining the quantity of gas flowing, drawn, or pumped from, or produced by any well.

And of
books.

(2) He shall also have the right at all times to examine said books and to call for and examine all books, records, and memoranda, whether the same are required by law to be kept or not, kept by the owner, lessee, tenant, operator or occupier or any one or more of them, for the purpose of ascertaining the quantity of gas flowing, drawn, or pumped from or produced by any well; and the owner, lessee, tenant, operator, or occupier shall forthwith upon demand produce to the Mine Assessor all such books, records, and memoranda for the purposes aforesaid. 7 Edw. VII. c. 9, s. 27.

When meter
to be affixed.

27. If the Mine Assessor has reason to believe that the amount of gas produced by the well is not correctly shown by the book required to be kept, or by other books, records or memoranda as aforesaid, he may direct that a meter shall be affixed by the owner, lessee, tenant, occupier or operator of every well to every main pipe or duct through which all

the gas flowing, drawn or pumped from the well or wells shall pass, so as to indicate the total gross quantity of gas flowing, drawn or pumped from, or produced by such well or wells. 7 Edw. VII. c. 9, s. 28.

28.—(1) The meter may be inspected and tested, at any time or times, by or at the request of the Mine Assessor, as he shall think fit, for the purpose of ascertaining whether it correctly records the quantity of gas flowing, drawn or pumped from, or produced by the well or wells, and in case he shall find that the same is not truly recording the quantity of gas flowing, drawn or pumped from, or produced by such well or wells, he may by a writing under his hand order that the same shall be forthwith put in order so as to furnish a true record, or he may order that a new meter shall forthwith be affixed to the pipe or duct; and the owner, lessee, tenant, operator or occupier shall forthwith cause the order to be obeyed. Defective meters to be remedied.

(2) If the Mine Assessor finds that the meter is so placed that the total quantity of gas flowing, drawn or pumped from, or produced by the well or wells does not pass through the meter, he may by a writing under his hand order that the same shall be so placed that the whole of the gas proceeding from the well or wells shall pass through the same, and the owner, lessee, tenant, occupier or operator shall forthwith cause the order to be obeyed. 7 Edw. VII. c. 9, s. 29. Meter not correctly placed.

29. Every owner, tenant, lessee, operator and occupier of a gas well or gas wells shall forthwith after the passing of this Act furnish to the Bureau of Mines a statement showing the wells operated by them or him, their location, the names and addresses of the owner, tenant, lessee, operator or occupier and the name and address of some person in Ontario to whom notices to be given under this Act may be sent and any order made by the Mine Assessor or any notice required to be given may be delivered to the owner, tenant, lessee, operator or occupier or to the person named for receiving notices, and if no such person is named, then to any manager, clerk, foreman or other person in the employment of the owner, tenant, lessee, operator or occupier at the well or in charge of the same, or to any manager or clerk at the office of the owner, tenant, lessee, operator or occupier. 7 Edw. VII. c. 9, s. 30. Notice of operating wells. Service of notice, etc.

30. Every owner, lessee, tenant, occupier and operator of any well or wells to which this Act applies, and every manager or superintendent thereof shall furnish to the Minister in each year on the first day of August and the first day of February a true statement under oath of the total quantity of gas which flowed, was drawn, or pumped from, or produced by, such well or wells during the six months

ending the thirtieth day of June and the thirty-first day of December respectively immediately preceding such dates. 7 Edw. VII. c. 9, s. 31.

Assessor to
examine
statement.

31.—(1) It shall be the duty of the Mine Assessor to examine the same, and ascertain whether or not the same is a true and correct statement of the quantity of gas which proceeded from the well or wells for such period, and if he finds the same to be correct, the quantity so stated shall be the quantity upon which the tax shall be computed for such period, and the Mine Assessor shall thereupon notify the owner, lessee, tenant, operator or occupier of the same.

Incorrect
statement,
amendment.

(2) If the Mine Assessor shall be of opinion that the same is incorrect, he shall notify the person furnishing the statement thereof, and in what particular the same is deemed to be incorrect, and, if the owner, lessee, tenant, occupier or operator assents thereto, the statement may be amended and re-sworn to, and when so amended the quantity so stated shall be the quantity upon which the tax shall be computed for such period.

Disputed
statement.

(3) If the owner, lessee, tenant, operator or occupier disputes the notice so given, the dispute shall be heard by the Mining Commissioner or the Ontario Railway and Municipal Board as the Minister shall direct, and such decision shall be final and conclusive, and the quantity so found shall be entered on the statement as the true quantity, and the tax for such period shall be computed thereon. 7 Edw. VII. c. 9, s. 32.

Date for
payment of
tax.

32.—(1) At the times specified in section 4, the owner, lessee, tenant, operator or occupier shall pay to the Minister the full tax for the quantity of gas shown in the statement as having proceeded from the well during the preceding year.

Settling
disputes as
to amount.

(2) If any dispute is then pending as to the true quantity, the tax shall nevertheless be paid on the amount shown in such statement, and as soon as such dispute has been determined by increasing the quantity, the remainder of the tax shall be forthwith paid, and if a less quantity is found to have proceeded from the well, the excess of the tax received shall be forthwith remitted to the person paying the tax. 7 Edw. VII. c. 9, s. 33.

Exemption of
municipal
corporation.

33. A municipal corporation shall not be required to pay any tax under Part II upon any gas actually used in Canada. 8 Edw. VII. c. 15, s. 6.

PART III.

PERCENTAGE, REMEDIES AND PENALTIES.

Ten per cent.
to be added
for default.

34.—(1) In case any tax by this Act imposed is not paid at the time in this Act provided, 10 per centum shall forth-

with be added thereto, and 10 per centum shall be added at the expiration of each year thereafter that the tax remains unpaid, and the said increased amounts shall for all purposes be and become the tax due and payable under this Act.

(2) It shall be the duty of the Deputy Minister of Mines or such other person as may be directed by the Minister to keep a careful record of all arrears of taxes under this Act, with the increased amounts from time to time entered thereon. 7 Edw. VII. c. 9, s. 35.

Record of
arrears to be
kept.

35. All taxes, double taxes, percentages, penalties and costs respectively payable under this Act shall be a special lien on the mine, mining location, mining claim, land or mining rights and upon all ore, minerals or mineral-bearing substances taken therefrom, and upon the gas well or wells and the leases of and rights respecting the same and upon all machinery upon or connected with the mine or gas well or wells in priority to every claim, privilege, lien or encumbrance of any person, whether the right or title of such person has accrued before or shall accrue after the attaching of such lien, and its priority shall not be lost or impaired by any neglect, omission or error of any official, officer or person, or by want of registration and the same may be realized by action for sale of any or all property, leases and rights subject to such lien. 7 Edw. VII. c. 9, s. 36.

Special lien
and priority
of the tax.

REMEDIES.

36. If any tax imposed by this Act is not paid when due, the same, together with the added percentage, may be recovered from the owner, tenant, lessee, occupier or operator of the mine or well by an action at the suit of the Minister in any court of competent jurisdiction, together with costs of action. 7 Edw. VII. c. 9, s. 37.

Action to
recover tax.

37.—(1) In addition to any other remedies for the recovery of any tax by this Act imposed, an injunction or order in the nature of injunction or the appointment of a receiver with all necessary powers, or such other relief or remedy as may seem necessary or expedient for securing payment of the tax, may, in any case where any tax under this Act is overdue or where the payment of any accrued or future tax seems endangered, be obtained in the High Court Division or County or District Court at the instance and in the name of the Minister, to prevent the removal, transportation or transmission of any ore, mineral, or mineral-bearing substance, or natural gas, or to prevent or restrict mining operations or the production or waste of natural gas, or to provide for such operations or production upon such terms and conditions as may seem proper.

Injunction or
receiver—
collection of
taxes.

Closing up
natural gas
well where tax
endangered
by waste.

(2) In any case where natural gas is wasting in such quantity that the Mine Assessor deems that payment of any tax due or to become due thereon is endangered, he may give notice in writing to the owner or person in charge of the well or opening from which the gas is flowing, or may post up notice at or near such well or opening requiring stoppage of such waste, and if the waste is not effectively prevented within six days thereafter it shall be lawful for the Mine Assessor with the consent of the Minister forthwith to close up or direct and procure the closing up of such well or opening in such way as he may deem suitable and proper, and the Mine Assessor shall have all rights and powers necessary therefor, and the expenses of such closing up as certified by the Mine Assessor shall, subject to appeal as provided by section 12, be added to and be deemed part of the tax under this Act. 8 Edw. VII. c. 15, s. 7.

Action by
Minister does
not abate.

38. Any action which may be brought under this Act may be brought by the Minister as plaintiff, and it shall not be necessary to name the Minister, and the action shall not abate by reason of a change in the person of such Minister or by reason of the office being vacant at any time, but the action may proceed as though no change had been made or no vacancy existed. 7 Edw. VII. c. 9, s. 39.

Distress.

39. In case of default of payment of any taxes by this Act imposed, the same, together with all additions of percentage, double tax, penalties and costs, may be levied and collected by distress, together with costs of distress, upon the goods and chattels wherever found of the person or any person liable therefor, under warrant signed by the Minister or Deputy Minister of Mines, directed to the Sheriff of any county or district in which the person in arrear may have any goods or chattels, and in such case the sheriff shall realize the amount directed to be realized by the warrant and all costs by sale of such goods or so much thereof as may be necessary to satisfy the amount directed to be levied by such warrant. 7 Edw. VII. c. 9, s. 40.

PENALTIES.

Penalty for
false informa-
tion.

40. Any person knowingly making or signing any false statement or furnishing any false or incorrect information to the Bureau of Mines or any Mine Assessor under section 8, or giving any other false or incorrect information to any officer or person in respect to any other matter or thing required under this Act, or keeping or causing to be kept any false or incorrect book or accounts regarding anything required under this Act, with intent to deceive shall, in addition to any other liability, incur a penalty of \$200 for every such offence, which penalty may be recovered upon summary conviction before any Justice of the Peace having jurisdiction within the municipality in which such false

statement or false information is made or furnished, or before any Justice of the Peace having jurisdiction within the municipality in which such false book or account is kept. 7 Edw. VII. c. 9, s. 41.

41. Every person who is required under the provisions of section 8 to make or furnish any statement or information, and every mine in respect of which such statement or information is required to be made or furnished shall, in case of neglect to conform with the provisions of the said section, incur a penalty of \$20 per day for each day during which default is made, which penalty or sum shall be added to and become part of the tax imposed by this Act, and such person and such mine shall also be liable to pay a tax of double the amount for which it would have been liable under section 5, and any such penalty or double tax may be recovered from any person liable therefor in an action brought in the name of the Minister, to be tried by a Judge without a jury. 7 Edw. VII. c. 9, s. 42.

Penalty for not furnishing information.

How recoverable.

42. Any person violating the provisions of section 7 and any person violating the provisions of section 11 by communicating or disclosing any information contrary to the provisions thereof shall incur a penalty of \$50 for every such offence. 7 Edw. VII. c. 9, s. 43.

Penalty for disclosing information, etc.

43. If any order made under section 29 is not complied with within a reasonable time after it shall have been delivered, the owner, lessee, tenant, operator or occupier shall be liable to a penalty of \$10 for every day from the delivery of the order until the same shall have been complied with to be recovered with costs by action at the suit of the Minister in any court of competent jurisdiction as a debt due, and the owner, lessee, tenant, operator or occupier shall also be liable for double the tax computed upon the amount of gas estimated by the Mine Assessor to be passing through the pipe or duct during such period. 7 Edw. VII. c. 9, s. 44.

Penalty for non-compliance with orders.

44. Except where otherwise expressly provided, the penalties imposed by or under the authority of this Act shall be recoverable under *The Ontario Summary Convictions Act*. *New.*

Recovery of penalties. Rev. Stat. c. 90.

BONUSES.

45.—(1) If at the time when any tax upon the profits arising out of the mining of iron ore or any tax upon natural gas shall become payable the person liable to pay the same shall upon oath show to the satisfaction of the Minister that such iron ore mined in Ontario has in the preceding year been smelted in the Dominion of Canada or delivered at a blast furnace in the said Dominion for the *bona fide* purpose of being smelted thereat, or shall in like manner show the quan-

Remission of tax on iron smelted and gas used in Canada.

tity of natural gas used during the preceding year within the Dominion of Canada, and if such person shall not during the preceding year have infringed in any way the provisions of this Act or any of them, and is not in default or arrear in any payment, the Minister on being satisfied of the facts deposed to may remit to the person liable to pay the same the whole of the tax payable in respect to such iron ore as has been smelted in Canada or delivered at a blast furnace therein for the *bona fide* purpose of being smelted, and ninety per cent. of the tax payable on such quantity of natural gas as has been used in the Dominion of Canada in the preceding year.

Examination
to determine
truth of
statements.

(2) For the purpose of ascertaining whether the facts deposed to are true and correct, the Mine Assessor may make any examination or enquiry necessary to ascertain the correctness of the statement, and the owner, lessee, tenant, occupier or operator shall produce and show to the assessor all books, documents, records and memoranda kept by him or under his control, and in case of refusal, neglect or default to furnish any information asked for by the Mine Assessor, or to produce and show any books, documents, records or memoranda kept by him or in his power or under his control, he shall not be entitled to any remission. 7 Edw. VII. c. 9, s. 46.

REGULATIONS.

Regulations
for carrying
out Act.

46. The Lieutenant-Governor in Council may make regulations for carrying out the purposes of this Act, and such regulations shall be published in the *Ontario Gazette* and shall be laid before the Assembly forthwith if the Assembly is then in session, and if it is not then in session, within fifteen days after the opening of the next session. 7 Edw. VII. c. 9, s. 47.

CHAPTER 27.

An Act respecting the Taxation of Certain Corporations for Provincial Purposes.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:—

1. This Act may be cited as *The Corporations Tax Act*. Short title.
8 Edw. VII. c. 14, s. 1.

INTERPRETATION.

2. In this Act

Interpretation.

- (a) "Bank" shall mean a corporation or joint stock "Bank," company wherever incorporated for the purpose of doing a banking business or the business of a savings bank, which transacts such business in Ontario, whether the head office is situate in Ontario or elsewhere;
- (b) "Company" shall include corporations and associa- "Company"
tions however or wherever incorporated; and "joint stock"
where any such corporation or association is placed "company"
in the hands or under the control of an agent, "corporation."
assignee, trustee, liquidator or receiver, or other officer, shall include such agent, assignee, trustee, liquidator, receiver, or other officer; and shall also include an individual, a partnership, syndicate or trust where the business is carried on in Ontario by such individual, partnership, syndicate or trust, whether the head office or chief place of business of such individual, partnership, syndicate or trust is in Ontario or elsewhere, but the word individual in this clause shall not apply to a private banker or to an individual merely because of his loaning money;
- (c) "Extra-Provincial Company" shall mean a com- "Extra Pro-
pany which has its head office elsewhere than in vincial Com-
Ontario; pany."
- (d) "Head Office" shall mean the head office in Ontario "Head
of a company or the place therein designated by Office."
the company as the head office, and where no such place is designated, that place of business of the company that may be designated as the head office by the Lieutenant-Governor in Council on the report of the Treasurer;

"Insurance Company."

(e) "Insurance Company" shall include life, fire, ocean or inland marine, inland transit, accident, plate glass, steam boiler and burglary insurance companies and guarantee, surety or casualty companies which transact business in Ontario, wherever such companies may be incorporated, whether the head office is situate in Ontario or elsewhere; but shall not include mutual fire insurance companies, unless they transact insurance on the cash plan, or mutual live stock and weather insurance companies licensed or registered under *The Ontario Insurance Act* or friendly societies lawfully transacting insurance business in Ontario under the said Act;

Rev. Stat.
c. 183.

"Loan Company."

(f) "Loan Company" shall mean a loan corporation and a loaning land corporation as defined by *The Loan and Trust Corporations Act* which transacts business within Ontario;

Rev. Stat.
c. 184.

"Railway."

(g) "Railway" shall include a railway and part of a railway in Ontario operated in whole or in part by steam, electricity or other motive power, constructed and operated on highways or on land owned by the company owning or operating it, or partly on highways and partly on such land, but not a street railway as defined by this Act;

"Street Railway."

(h) "Street Railway" shall include a railway constructed or operated in whole or in part upon or along a highway under or by virtue of an agreement with or by-law of a city, and shall include only those portions of the railway which are within the city;

"Treasurer."

(i) "Treasurer" shall mean Treasurer of Ontario;

"Trust Company."

(j) "Trust Company" shall mean a corporation authorized under any law in force in Ontario

(i) To act as executor, administrator, trustee, liquidator, receiver, assignee, guardian or committee; or

(ii) To receive on deposit deeds, wills, or other valuable papers or securities for money or jewelry, plate, or other personal property, and to guarantee the safe-keeping of the same; or

(iii) To act as attorney or agent for the transaction of any business or class of business, or the collection of money or the management of property of any kind; or

(iv) To act as agent for the purpose of issuing or countersigning certificates of stock, bonds or other obligations of any company or muni-

cipal or school corporation, and to receive, invest and manage any sinking fund therefor; or

- (v) To guarantee any investment made by it as agent or otherwise.

3. This Act shall not apply to railways, street railways, gas, electric or telephone works owned and operated by a municipal corporation, whether operated directly by the corporation or by a Board or Commission. 8 Edw. VII. c. 14, s. 3.

Act not to apply to railways operated by municipality.

TAXATION OF COMPANIES.

4.—(1) Every company, not including a municipal corporation, which transacts business in Ontario under its own name or through an agent or otherwise, shall annually pay to His Majesty for the uses of Ontario, the taxes imposed by this Act at the time and in the manner hereinafter provided.

Taxes for the uses of the Province.

BANKS.

- (2) Every bank shall pay:—

(a) A tax of one-tenth of one per centum on the paid-up capital stock thereof up to \$2,000,000, and in addition thereto \$25 for every \$100,000 or fraction thereof of the paid-up capital stock, in excess of \$2,000,000, and not exceeding \$6,000,000.

Payable by banks.

(b) An additional tax of \$100 for the head office in Ontario, and \$25 for each additional office, branch or agency in Ontario.

Where the head office or principal place of business of a bank is out of Ontario, and it employs within Ontario only a part of its paid-up capital, and has not more than five agencies or branch offices within Ontario, the Lieutenant-Governor in Council may reduce the amount of the tax, regard being had to the amount of the capital or other monies of such bank in use in Ontario; but the tax shall not be less than one-tenth of one per cent. upon one-half of the paid-up capital.

Reduction in certain cases.

INSURANCE COMPANIES.

(3)—(a) Every life insurance company which transacts business in Ontario shall pay a tax of one per centum, and every other insurance company shall pay a tax of two-thirds of one per centum, calculated on the gross premiums received by the company in respect of the business transacted in Ontario;

By insurance companies.

(b) In the case of mutual fire insurance companies which receive premiums in cash the tax shall be calculated on the gross premiums received in cash in respect of the insurance

Mutual fire insurance companies.

Rev. Stat.
c. 183.

transacted on the cash plan in Ontario, but every insurance company licensed under *The Ontario Insurance Act* and assessed under section 6 of that Act shall be credited with the payment under such section in reduction of the tax payable under this Act.

Extra provin-
cial life insur-
ance com-
panies, taxa-
tion of.

(c) Where a life insurance company has its head office elsewhere than in Ontario, and has an annual income of less than \$20,000 from premiums on policies on the lives of persons resident in Ontario, and where such company lends money on the security of lands in Ontario, the company shall pay a tax of one per centum calculated on the gross premiums received from such policies, and of one-quarter of one per cent. on the gross annual income received from loans on policies or on land or securities on land in Ontario.

Reinsurance.

(d) In the case of reinsurance by an insurance company the company reinsured shall be exempt from the tax imposed on the portion of the premium paid to the reinsuring company, but the reinsuring company shall be liable for the tax in respect thereof as part of its gross premiums. Where the reinsuring company does not transact business in Ontario or has no principal or head office therein, the company reinsured shall retain in its hands so much of the premium for reinsurance as is equivalent to the tax imposed in respect of such premium, and shall be liable for the tax and for the payment thereof to the Treasurer.

Insurance
companies
incorporated
under laws
discriminating
against Cana-
dian com-
panies.

(e) Where any country or any state of any country imposes a tax or license fee which has the effect of discriminating against insurance companies or against any classes of insurance companies organized under the laws of Canada or of Ontario and having their principal offices in Ontario, and of imposing a tax or license fee higher or greater than the tax or license fee which home companies in such state or country are required to pay, the Lieutenant-Governor in Council may direct that any insurance company which is organized in or under the laws of any such country or state, or has its head or principal office therein, and which transacts insurance business in Ontario, shall pay in addition to the tax imposed by clauses (a) and (b) of this subsection, a tax calculated on the gross premiums received by the company or in respect of the business transacted in Ontario during the preceding year, but so that such increase shall not exceed the equivalent of the extra tax or license fee or both imposed in such country or state.

What pre-
miums to be
reckoned in
estimating tax.

(f) In estimating the amount of the tax payable under this Act by an insurance company every premium which

(i) Is by the terms of the policy or a renewal thereof or otherwise payable in Ontario, or

(ii) Is paid in Ontario, or

- (iii) Is payable upon or in respect of a risk undertaken in Ontario, or
- (iv) Is payable in respect of insurance of a person or property resident or situate in Ontario at the time of payment, whether such premium is earned wholly or partly in Ontario or elsewhere and whether the business is transacted in respect of such policy or the payment of such premium is made wholly or partly within Ontario or elsewhere,

shall be deemed to be a premium in respect of business transacted in Ontario.

(g) The chief agent in Ontario under *The Ontario Insurance Act*, of an extra-Provincial insurance company, and every other insurance company, shall keep a separate book or set of books in which shall be entered the premiums mentioned in clause (f) of this subsection, and all other income of the company in respect of business transacted in Ontario, and in default the company shall incur a penalty equal, in the case of a life insurance company, to one per cent., and in the case of every other insurance company, to two-thirds of one per cent., on the total gross premiums and other gross income of the company.

Books to be kept by insurance companies.

LOAN COMPANIES.

(4) Every loan company which transacts business in Ontario shall pay a tax as follows:—

By loan companies.

- (a) A company with fixed or permanent paid-up capital, 35 cents for every \$1,000 or fraction thereof of paid-up capital, but in no case less than \$65;
- (b) A company having terminating or withdrawable capital as well as fixed or permanent capital, the sum of 35 cents on every \$1,000 of paid-up terminating or withdrawable capital after the first \$100,000, in addition to the amount payable under clause a.
- (c) A company having terminating or withdrawable capital only, the sum of 65 cents on every \$1,000 or fraction thereof of paid-up terminating or withdrawable capital after the first \$100,000;

but in the case of a company incorporated out of Ontario, the Lieutenant-Governor in Council may direct that the tax shall be calculated as provided by clause (a) upon the amount of the funds used or employed by the company in Ontario.

Reduction in certain cases.

TRUST COMPANIES.

By trust com-
panies.

(5) Every trust company which transacts business in Ontario shall pay a tax of \$250 on the paid-up capital up to \$100,000, and \$65 on every additional \$100,000 or fraction thereof of paid-up capital, and where the gross profits are \$25,000 per annum or over, shall pay the further sum of \$500 per annum.

- (a) The income derived from the paid-up capital of the company which may be invested shall not, for the purposes of this Act, be reckoned as gross profits. 8 Edw. VII. c. 14, s. 4 (1-5).

RAILWAYS.

Tax payable by
railway com-
panies.

(6) Every company owning, operating or using a railway shall pay a tax of \$60 per mile for one track, and, where the line consists of two or more tracks, of \$40 per mile for each additional track, owned, operated or used in any organized municipality; and of \$40 per mile for one track, and, where the line consists of two or more tracks, of \$20 per mile for each additional track, in territory without municipal organization; provided that a company owning, operating or using a railway which, either by itself or in conjunction with any other railway leased by it or to which it is leased or with which it is amalgamated or together with which it forms one system does not exceed 150 miles in length from terminus to terminus, shall in lieu of the said tax pay a tax of \$15 per mile for one track and, where the line consists of two or more tracks, of \$5 per mile for each additional track, and where the railway or system does not exceed 30 miles in length from terminus to terminus a tax of \$10 per mile for one track and \$5 per mile for each additional track. 1 Geo. V. c. 5, s. 1, *part*.

- (a) Both the company owning the railway and the company operating or using it shall be jointly and severally liable for the payment of the amount of the tax to the Treasurer, but the total amount payable in respect of any railway shall not exceed the amounts above respectively mentioned, notwithstanding that the railway is owned, operated or used by more than one company;
- (b) The measurement of track for the purposes of this subsection shall not include switches, spurs or siding. 8 Edw. VII. c. 14, s. 4 (6), *part*.

STREET RAILWAYS.

By street
railway
companies.

(7) Every company owning, operating or using a street railway or part thereof in a city for carrying passengers shall pay for each mile of track within the city a tax of:

- (a) \$20 when such mileage does not exceed 20 miles;

- (b) \$35 when such mileage exceeds 20 miles but does not exceed 30 miles;
- (c) \$45 when such mileage exceeds 30 miles, but does not exceed 50 miles, and
- (d) \$60 when such mileage exceeds 50 miles.

The mileage shall be computed on the single track, each mile of double track being counted as two miles of single track; but in calculating the mileage switches or sidings, tracks into car stables or car sheds, Y's and curves laid at street corners and portions of track not in general use for passenger traffic shall not be counted.

TELEGRAPH COMPANIES.

(8) Every company owning, operating or using a line or part of a line of telegraph within Ontario for gain shall pay a tax of one-tenth of one per centum upon the total amount of money invested in such line or part thereof, or works connected therewith, and both the company owning and the company operating or using such line or part thereof shall be jointly and severally liable for the payment of the amount of the tax to the Treasurer; but the total amount payable in respect of any line or part of a line shall not exceed the amount above mentioned, notwithstanding that the line or part thereof is owned, operated or used by more than one company.

By telegraph companies.

TELEPHONE COMPANIES.

(9) Every company owning, operating or using a telephone line or part thereof in Ontario for gain shall pay a tax of one-eighth of one per cent. upon the paid-up capital of such company.

By telephone companies.

GAS AND ELECTRIC COMPANIES.

(10) Every gas company and every electric lighting company in any city in the Province shall pay a tax of one-tenth of one per centum on its paid-up capital, but this shall not apply to companies supplying natural gas or to any gas or electric works owned and operated by a municipality. 8 Edw. VII. c. 14, s. 4, (7-10).

By gas and electric light companies.

EXPRESS COMPANIES.

(11) Every express company operating over a railway in Ontario shall pay a tax of \$500 for each 100 miles or fraction thereof. 1 Geo. V. c. 5, s. 1, *part*.

By express companies.

SLEEPING AND PARLOUR CAR COMPANIES.

(12) Every company transacting business in Ontario by leasing or hiring sleeping or parlour cars to a railway company, or whose sleeping or parlour cars run upon or are used

By sleeping car companies.

by a railway company within Ontario, shall pay the sum of one-third of one per cent. upon the money invested in such cars in use in Ontario. 8 Edw. VII. c. 14, s. 4, (12).

RACE TRACK MEETINGS.

Tax upon race
track meetings

(13) Every incorporated company, association or club, owning or operating or using a race track and holding a race-meeting, shall pay in advance before such race-meeting a license fee of \$200 for each day of such meeting, and in default of such payment the Provincial police may, under instructions from the Treasurer, stop all racing upon such track until the said tax is paid.

(a) In this subsection the word "race-meeting" shall mean a series of trotting, pacing, running, or mixed trotting, pacing or running races for horses, held for not less than five or more than seven days within any period of fourteen consecutive days, or if held less than five days where the number of running races exceeds one in each day.

Trotting and
pacing
meetings.

(14) Every incorporated company, association or club, owning, operating or using a driving, running or trotting track, and holding a race-meeting, shall pay in advance before such meeting a license fee of \$10 for each day on which such meeting continues, and in default of such payment the Provincial police may, under instructions from the Treasurer, stop all racing on said tracks until such tax is paid.

(a) In this subsection the word "race-meeting" shall mean a series of trotting and pacing or mixed trotting, pacing and running races for horses which continue for not more than four days in a period of not more than ten consecutive days, and where the number of running races shall not exceed one in each day.

Licenses.

(15) On receiving the license fee referred to in subsections 13 and 14, the Treasurer may issue a license imposing such restrictions and subject to such conditions as the Lieutenant-Governor in Council may by regulation determine, and every such incorporated company, association or club which violates such restrictions and conditions, or any of them, shall be liable to have all racing forthwith stopped upon its track by the Provincial police acting under instructions from the Treasurer. 1 Geo. V. c. 5, s. 4.

PAYMENT OF TAX AND RETURNS.

Exemption of
telegraph and
telephone
plant of
railway.

5. The telephone and telegraph plant, poles and wires of a railway company which are used exclusively in the running of trains or for any other purpose of a railway and not for commercial purposes shall not be liable for the tax imposed by subsections 8 and 9 of section 4. 8 Edw. VII. c. 14, s. 5.

6. The tax imposed by this Act shall be determined upon the amount of the paid-up capital stock, mileage or other subject in respect of which the amount of the tax is to be ascertained as the same stood on the 31st day of December next preceding the year for which the tax is imposed. 8 Edw VII. c. 14, s. 6. How tax to be determined.

7. The taxes imposed by this Act shall be deemed to be due on the first day of January of the year in which they are imposed, but shall not be payable until the first day of October thereafter. 8 Edw. VII. c. 14, s. 7. Taxes when to accrue.

8.—(1) Every company on which a tax is imposed by this Act shall on or before the first day of June in each year without any notice or demand deliver in duplicate to the Treasurer such return as the Lieutenant-Governor in Council may prescribe for the purpose of carrying out the provisions of this Act. Company to file annual statement.

(2) The return shall be verified by the oaths of the president and manager or of the manager and vice-president having personal knowledge of the affairs of the company, and in the case of extra-Provincial companies by the manager or chief agent of the company in Ontario, and the accountant or secretary thereof or by such other person or persons connected with the company as the Treasurer may require. Verification of returns. Extra-Provincial companies.

(3) In the case of an extra-Provincial company which has no officer within Ontario excepting a chief agent, the return may be verified by the oath of the chief agent only. 8 Edw. VII. c. 14, s. 8. Idem.

9. For every default in complying with the provisions of the next preceding section the company and the person or person by whom the return should be verified shall each incur a penalty of \$20 for each day during which the default continues, and the company shall also be liable to pay a tax of double the amount for which it is liable under the preceding sections and the penalty or double tax may be recovered in any court of competent jurisdiction by and in the name of the Treasurer, and the action shall be tried without a jury. 8 Edw. VII. c. 14, s. 9. Penalty for not making returns.

10. The Treasurer may, before or after the time for making it, enlarge the time for making any return. 8 Edw. VII. c. 14, s. 10. Enlarging time for making return.

11.—(1) If the Treasurer, in order to enable him to determine whether a return furnished is correct, desires further information, he may, by registered letter addressed to the president, manager, secretary, or agent of the company, require a further return to be furnished under oath within thirty days. Requisition by treasurer for further information.

Commission of enquiry.

(2) If the required information is not furnished to the satisfaction of the Treasurer, the Lieutenant-Governor in Council may direct inquiry to be made by a commissioner or commissioners, appointed under *The Public Inquiries Act*, and the determination of the commissioner or commissioners, after having given all persons concerned an opportunity to be heard, shall, for the purposes of this Act, be final as to the particulars mentioned in the report, but the Lieutenant-Governor in Council may for cause vary the report; but the findings of the commissioner or commissioners shall not be varied so that the amount of the tax payable by the company shall be increased without giving the company an opportunity of being heard.

Rev. Stat.
c. 18.

Cost of commission.

(3) If the inquiry is occasioned by failure to furnish the information required by the Treasurer, subject to the next succeeding subsection, the company shall pay the costs of the inquiry, but if the return is found to be correct and the required information appears to have been duly furnished, the Treasurer may direct the costs or such of them as were necessary to be paid by Ontario.

Additional tax where amount under-stated.

(4) If the commissioner or commissioners find that the return understates the amount upon which the tax should be paid, the company, besides paying the costs of the inquiry, shall pay the tax based on the amount as found by the commissioner or commissioners with fifty per cent. added to the tax, unless the Lieutenant-Governor in Council shall otherwise direct.

Taxation of costs.

(5) The costs of the commission may be fixed and certified by the Treasurer, or he may direct the same to be taxed, and when payable to the Crown the same may be recovered in the manner hereby provided for the recovery of a tax.

Who to tax costs.

(6) If the Treasurer directs the costs to be taxed the same shall be taxed by a taxing officer of the Supreme Court.

When understatement of amount made in good faith.

(7) If the commissioner or commissioners find that the return understates the amount on which the tax should be paid, but also certify that such understatement was not made with intent to decrease the amount of the tax to be paid but was made in good faith and with no improper motive, the Lieutenant-Governor in Council may, upon the recommendation of the Treasurer, remit so much of the added percentage and so much of the costs as to him may seem meet. 8 Edw. VII. c. 14, s. 11.

Stamp tax on transfer of securities of corporation.

12. There shall be levied a tax of two cents, payable by the transferor in money or stamps, for every \$100 or fraction thereof of the par value upon every change of ownership consequent upon the sale, transfer or assignment of shares, or debenture stock issued by any corporation or company made or carried into effect in Ontario; but the first delivery

by the corporation or company of such shares, or debenture stock, in order to effect an issue, shall not be subject to the tax imposed by this section. 1 Geo. V. c. 5, s. 2, *part*.

13.—(1) Any corporation or company entering or permitting the entry in any book or register under its control of any such sale, transfer, or assignment unless the tax be paid when such entry is made, shall incur a penalty of not less than \$20 or more than \$50. Transfer not to be made in books until tax paid.

(2) In default of payment of the tax, the transferor shall incur a penalty of not less than \$20 or more than \$50. Penalty for non-payment by transferor.

(3) The penalties imposed in this section shall be recoverable at the suit of the Attorney-General. 1 Geo. V. c. 5, s. 2, *part*. Recovery of penalties.

14. Any sale, transfer, or assignment made through a broker resident in Ontario not a member of a recognized stock exchange shall be deemed to be made and carried into effect in Ontario. 1 Geo. V. c. 5, s. 2, *part*. Sales through brokers not members of stock exchange.

15. The next preceding three sections shall not apply to any transfer or assignment of shares, or debenture stock made *bona fide* for the security of loans, or to the re-transfer or re-assignment of the same to the borrower or any transmission owing to death. Tax not to apply to transfer, as security or transmission on death.

16. The Lieutenant-Governor in Council may remit or reduce any tax imposed by section 12 which, because of the transfer being otherwise subject to taxation in another jurisdiction, or because several formal transfers are necessary to effect one true change of ownership, or which from any other similar cause appears to be unjust or oppressive. 1 Geo. V. c. 5, s. 2, *part*. Remission or reduction.

17. The Lieutenant-Governor in Council may make regulations for carrying into effect sections 12 to 15. 1 Geo. V. c. 5, s. 2, *part*. Regulations.

18.—(1) In default of payment of any tax by this Act imposed, the same may be levied and collected with costs by distress upon the goods and chattels wherever found of the company liable therefor under a warrant signed by the Treasurer directed to the sheriff of any county, and the sheriff shall levy and collect the tax or so much thereof as may be in arrear and all costs by sale of the goods and chattels of the company or so much thereof as may be necessary to satisfy the tax and costs. Collection of tax. Distress.

(2) Any tax or penalty imposed by this Act may at the option of the Treasurer be recovered by and in the name of
24—s.

the Treasurer, and the action shall be tried without a jury.
8 Edw. VII. c. 14, s. 12.

Priority of
tax.

19. Every tax and penalty imposed by this Act shall be a first lien and charge upon the property in Ontario of the company liable to pay the same. 8 Edw. VII. c. 14, s. 13.

No abatement
of actions.

20. An action brought by the Treasurer under this Act shall be brought and prosecuted in and by his name of office and may be continued by his successor in office as if no change had occurred. 8 Edw. VII. c. 14, s. 14.

Recovery of
penalties.

21. The penalty under this Act shall be recovered only at the instance or with the consent of the Attorney-General. 8 Edw. VII. c. 14, s. 15.

Compromising
disputes as to
liability for
taxes.

22. If any doubt or dispute arises as to the liability of a company to pay a tax or any portion of a tax demanded under the authority of this Act, or if owing to special circumstances it is deemed inequitable to demand payment of the whole amount imposed under this Act, the Treasurer may accept such amount as he may deem proper, and if the tax demanded has been paid under protest he may refund the same or any part thereof. 8 Edw. VII. c. 14, s. 16.

Distribution of
one half the
revenue from
railway tax
among muni-
cipalities.

23.—(1) There shall be set apart from the Consolidated Revenue Fund on the 31st day of December in each year a sum equal to one-half the receipts of the Province during such year for taxes from railway companies under subsection 6 of section 4 of this Act, after deducting therefrom the sum of \$30,000, and the sum so set apart shall, on the 31st day of December in each year, be credited to the cities, towns, villages and organized townships in Ontario in proportion to population as compared with the whole population of Ontario as shown by the last preceding Dominion census, and in the event of the population of any municipality being uncertain, owing to change of municipal boundaries, the Lieutenant-Governor in Council may determine the same for the purposes of this Act.

Fixing
amounts.

(2) The Lieutenant-Governor in Council may fix the amount per head of the population to be so credited without allowing for fractions of a cent.

Debiting
municipalities
with cost of
maintenance
of patients.

(3) Against the amount so credited there shall be charged, as a contribution towards his maintenance, a sum amounting to ten cents per patient per day for each patient belonging to the municipality maintained for the whole or any part of such year in any Provincial Hospital for the Insane, such charge to be made only in respect of patients on account of whose maintenance the Province is not in receipt from any source of one dollar and a half per week, or more. 8 Edw. VII. c. 14, s. 17, (1)-(3).

(4) All questions as to the liability of a municipal corporation to such charge shall be determined by an officer designated for that purpose by the Provincial Secretary, whose decision may at any time and from time to time be varied or cancelled by himself or by any other officer designated by the Provincial Secretary, and the certificate of the Provincial Secretary declaring the amount of such charge shall be accepted and acted upon by the Provincial Auditor without further evidence as determining the amount to be deducted under subsection 3. 1 Geo. V. c. 5, s. 3.

Determining liability of municipalities to contribute to maintenance of patients.

(5) The balance remaining at the credit of each municipal corporation after deducting such charge shall be forthwith paid by the Treasurer to the corporation; but no municipal corporation shall be liable for any payment if the amount charged in any year exceeds the amount credited in such year.

Payment of balance.

(6) The name of every patient in respect of whom the charge is made shall be furnished annually to the municipal corporation, but shall not be published in its accounts unless the council so direct. 8 Edw. VII. c. 14, s. 17 (5), (6).

Names of patients to be sent to municipalities.

2. PUBLIC LANDS.

CHAPTER 28.

An Act respecting Public Lands and the Department of Lands, Forests and Mines.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title. 1. This Act may be cited as *The Public Lands Act*.
3-4 Geo. V. c. 6, s. 1.
- Interpre- 2. In this Act,
tation.
"Depart- (a) "Department" shall mean Department of Lands,
ment."
"Mines and (b) "Mines and Minerals" shall include gold, silver,
minerals."
copper, lead, iron and other mines and minerals
and quarries and beds of stone, marble or gyp-
sum;
"Minister."
(c) "Minister" shall mean Minister of Lands, Forests
and Mines;
"Public
Lands,"
(d) "Public Lands" shall include lands heretofore
designated as Crown Lands, School Lands and
Clergy Lands.
"Regula- (e) "Regulations" shall mean regulations made by the
tions."
Lieutenant-Governor in Council. 3-4 Geo. V.
c. 6, s. 2.

PART I.

DEPARTMENT OF LANDS, FORESTS AND MINES.

Department 3. There shall continue to be a Department for the man-
and Minis- agement, sale and disposition of the Public Lands, Forests
ter of and Mines, to be called "The Department of Lands, Forests
Lands, and Mines," and the same shall be presided over by The
Forests, Minister of Lands, Forests and Mines. 3-4 Geo. V. c. 6, s. 3.
and Mines.

Deputy 4.—(1) There shall be a Deputy Minister of Lands and
Minister Forests, who shall be appointed by the Lieutenant-Governor
of Lands in Council and shall perform such duties as may be assigned
and Forests. to him by the Lieutenant-Governor in Council or by the
Minister, and in the absence of the Minister or in the case of
a vacancy in the office of Minister, he shall preside over the

Department as regards all matters other than those assigned to the Deputy Minister of Mines, and shall discharge as to the matters assigned to him the duties of the Minister.

(2) There shall also be a Deputy Minister of Mines, who shall be appointed by the Lieutenant-Governor in Council and shall perform such duties in connection with mines, mining lands and the mining industry and other matters as may be assigned to him by the Lieutenant-Governor in Council or by the Minister, and in the absence of the Minister or in the case of a vacancy in the office of Minister, he shall discharge the duties of the Minister with respect to mines, mining lands, and the mining industry and such other matters as may be so assigned to him.

(3) The Deputy Ministers shall before entering upon their duties take and subscribe an oath faithfully to discharge the same, which shall be administered by the Minister or by some person appointed by the Lieutenant-Governor in Council for that purpose.

(4) In the absence of either of the Deputy Ministers the other shall discharge his duties. 3-4 Geo. V. c. 6, s. 4.

5.—(1) The Lieutenant-Governor in Council may make such regulations as he may deem necessary to carry out the provisions of this Act, or to meet cases for which no provision is made by this Act.

(2) The regulations shall be published in the *Ontario Gazette*, and in such newspaper as the Minister may direct, and shall be laid before the Assembly forthwith if the Assembly is then in session and if it is not in session within 15 days after the opening of the next session. 3-4 Geo. V. c. 6, s. 5.

6. The Lieutenant-Governor in Council may appoint such officers and agents to carry out the provisions of this Act and of the regulations as he may deem necessary. 3-4 Geo. V. c. 6, s. 6.

7. The powers by this Act conferred on the Minister shall be exercised subject to the regulations and they may also be exercised by the Lieutenant-Governor in Council. 3-4 Geo. V. c. 6, s. 7.

8. The Minister shall annually lay before the Assembly within ten days after the meeting thereof, a report of the proceedings and transactions of the Department during the next preceding calendar year. 3-4 Geo. V. c. 6, s. 8.

9. The Deputy Ministers, and every Public Lands agent shall furnish such security for the due performance of their duties as the Lieutenant-Governor in Council may prescribe.

Purchase,
etc., by
agent of
land, etc.,
in his agency
forbidden.

10.—(1) No Public Lands agent shall within the agency for which he is appointed, unless under the authority of the Minister, directly or indirectly purchase or become the owner of or interested in any Public Lands in such agency, and any such purchase or interest shall be void.

Penalty.

(2) For every contravention of this section the agent shall incur a penalty of \$400. 3-4 Geo. V. c. 6, s. 10.

SURVEYS.

Survey of
unsurveyed
Public
Lands.

11. The Minister, subject to the regulations and to the directions of the Lieutenant-Governor in Council, may cause to be surveyed and sub-divided any of the unsurveyed Public Lands in such manner and according to such plan as he may deem proper. 3-4 Geo. V. c. 6, s. 11.

GRANTS, SALES AND LICENSES OF OCCUPATION.

Appropriation
for certain
public pur-
poses and
free grants
thereof
made.

12.—(1) The Lieutenant-Governor in Council may set apart and appropriate such of the Public Lands as he may deem expedient for the sites of wharves or piers, market places, gaols, court houses, public parks or gardens, town halls, hospitals, places of public worship, burying grounds, schools, and for purposes of agricultural exhibitions, and for other like public purposes, and for model or industrial farms; and may make free grants for such purposes, and the trusts and uses to which they are to be subject shall be expressed in the letters patent; but no grant shall be for more than ten acres in any one case, and for any one of such purposes, except for a model or industrial Farm, in which case the grant shall not be for more than one hundred acres.

Proviso.

Revocation.

(2) The Lieutenant-Governor in Council at any time before the issue of the letters patent may revoke any such appropriation. 3-4 Geo. V. c. 6, s. 12.

Lieutenant-
Governor
to fix price
of Public
Lands, etc.

13. The Lieutenant-Governor in Council, may from time to time, fix the prices at which the Public Lands are to be sold, and the terms and conditions of sale and of settlement. 3-4 Geo. V. c. 6, s. 13.

Licenses
of occupa-
tion.

14.—(1) The Minister may issue under his hand and seal a license of occupation to any person who has purchased, or is permitted to occupy, or is entrusted with the care or protection of any Public Lands or who has received or been located on any Public Lands as a free grant.

Effect of
license of
occupation.

(2) Such person or his assigns may take possession of and occupy the land for which the license is issued, subject to the conditions of the license, and may under it, unless it has been revoked or cancelled, maintain actions against any wrongdoer or trespasser, as effectually as he could under letters patent from the Crown.

(3) The license of occupation shall be *prima facie* evidence ^{As evidence.} of the right to possession by such person and his assigns of the land, but shall have no force against a license to cut pine trees existing at the time of its issue or where the pine trees are reserved to the Crown against a license to cut such trees then existing or thereafter issued. 3-4 Geo. V. c. 6, s. 14.

15. The Minister shall have authority to determine all questions which arise as to the rights of persons claiming to be entitled to letters patent of land located or sold under the provisions of this Act and his decision shall be final and conclusive. 3-4 Geo. V. c. 6, s. 15. ^{Minister to decide as to right to patent.}

FORFEITURE OF CLAIMS.

16. If the Minister is satisfied that a purchaser, locatee or lessee of Public Lands, or any person claiming under or through him, has been guilty of fraud or imposition, or has violated any of the conditions of sale, location or lease, or of the license of occupation, or if the same was made or issued in error or by mistake, he may cancel such sale, location, lease or license, and resume the land and dispose of it as if the same had never been made. 3-4 Geo. V. c. 6, s. 16. ^{Cancellation of sale, etc., of land in case of fraud or error, etc.}

17.—(1) Where a purchaser, locatee, lessee or other person refuses or neglects to deliver up possession of any land after the revocation or cancellation of the sale, location, lease or license of occupation thereof, or where a person is wrongfully in possession of Public Lands and refuses to vacate or abandon possession of the same, the Minister may apply to a Judge of the County or District Court of the County or District in which the land or any part of it is situate for an order for possession, and the Judge, upon proof to his satisfaction that the right or title of such purchaser, locatee, lessee or other person to hold the land has been revoked or cancelled, or that the person in possession is wrongfully in possession of the land shall make an order requiring him to deliver up the land to the Minister, or to any person authorized by him to receive possession of it, or the Minister may by his warrant require such purchaser, locatee, lessee or person to deliver up the land to the person named in the warrant. ^{Mode of obtaining possession, if the settler refuses to deliver up land, or a trespasser is in possession.}

(2) The order or warrant shall have the same force as a writ of possession, and the sheriff, or bailiff, or person to whom it is entrusted for execution shall execute it in like manner as he would a writ of possession in an action for the recovery of land. ^{Effect of order or warrant.}

(3) The sheriff, bailiff, or other person executing the order or warrant may take with him all necessary assistance, and shall have the right to demand such assistance in the same manner as a constable or other peace officer in the execution of his duty. ^{Officer's right to demand assistance, etc.}

Removal of trespassers from Public Lands.

(4) Where it appears to the Minister that the presence of any person, who is wrongfully or without lawful authority in possession of or occupying any Public Lands, is dangerous to the safety of any timber or other public property on such land or in its vicinity, and it is expedient for that or any other reason to remove him from such land, the Minister may by warrant authorize any member of the Ontario Provincial Police Force, forest ranger, Public Lands agent, or other officer or person to remove such person from such land and also to remove therefrom any building, structure or tent erected or used by such person.

Person removed may be again removed.

(5) If any person who has given up possession of or has been removed from any land under the authority of this section again returns to or enters upon it the order or warrant shall be a sufficient authority to the officer or person named in it, again to remove such person from the land and the power of removal may be exercised under such order or warrant from time to time, and as often as occasion may require.

Penalty for obstruction, etc.

(6) Every person who refuses to obey any such order or warrant, or who resists, obstructs or interferes with any person executing it, or who again returns to the land, shall incur a penalty of not less than \$20 or more than \$100, recoverable under *The Ontario Summary Convictions Act*, and shall also be liable to imprisonment for any term not exceeding six months. 3-4 Geo. V. c. 6, s. 17.

RENT IN ARREAR.

Issue of distress warrant for rent in arrear;

18. Where rent payable to the Crown on a lease of Public Lands is in arrear, the Minister or an agent or officer appointed under this Act and authorized by the Minister to act in such cases, may issue a warrant, directed to any person named in it, in the nature of a distress warrant, as in ordinary cases of landlord and tenant; and the same proceedings may be had thereon for the collection of such arrears as in the last mentioned cases; or an action may be brought in the name of the Minister for the recovery of the arrears, but a demand of the rent shall not be necessary in any case. 3-4 Geo. V. c. 6, s. 18.

or action may be brought.

PATENTS ISSUED IN ERROR.

Cancellation of erroneous patents.

19.—(1) Where letters patent have been issued to or in the name of the wrong person, through mistake, or contain any clerical error or misnomer, or a wrong description of the land intended to be granted, the Minister, if there is no adverse claim, may direct the defective patent to be cancelled and a correct one to be issued in its stead, and the corrected letters patent shall relate back to the date of the one so cancelled and shall have the same effect as if issued at the date of such cancelled letters patent.

(2) The powers conferred by subsection 1 may be exercised notwithstanding that the land has been registered under *The Land Titles Act*. 3-4 Geo. V. c. 6, s. 19. Correction of errors in patent after registration.

20. Where grants or letters patent for the same land inconsistent with each other have been issued through error, or where sales or appropriations of the land inconsistent with each other have been made, the Minister may, in cases of sale, cause a repayment of the purchase money, with interest to be made to the person damnified, or where the land has passed from the original purchaser, or has been improved before discovery of the error, or where the original grant or appropriation was a free grant, he may in substitution appropriate land or give a certificate entitling the person damnified to Public Lands, of such value and to such extent as the Minister may deem just; but no claim shall be entertained unless it is made within five years from the discovery of the error. 3-4 Geo. V. c. 6, s. 20. Compensation in case of double or inconsistent grants. Proviso.

21.—(1) Where by reason of erroneous survey or of error in the books or plans in the Department any grant, sale or appropriation of land is found to be deficient, or any parcel of land contains less than the quantity of land mentioned in the letters patent therefor, the Minister may direct that the purchase money of so much land as is deficient, with interest thereon from the time of the application for a refund or if the land has passed from the original purchaser, the Minister may direct that the purchase money which the claimant, if he was ignorant of the deficiency at the time of his purchase, paid for so much of the land as is deficient, with interest thereon from the time of the application for a refund, be paid to him in land or money, as the Minister may direct. Compensation for deficiency of land by reason of false survey or error in departmental books or plans.

(2) In the case of a free grant, the Minister may direct a grant to be made of other land equal in value to so much of the land intended to be granted as is deficient, as a free grant. Case of free grants.

(3) No claim shall be entertained unless it is made within five years from the date of the letters patent, or unless the deficiency is equal to one-tenth of the whole quantity described as being contained in the land granted. 3-4 Geo. V. c. 6, s. 21. Limitations.

22. If letters patent for land are repealed or avoided in a judicial proceeding, the judgment shall be registered in the registry office of the registry division in which the land lies or in the proper Land Titles Office as the case may be. 3-4 Geo. V. c. 6, s. 22. Registration of judgments.

REDUCTIONS OF PRICE AND ABATEMENTS OF INTEREST.

Reduction in the price of lands sold by the Crown beyond their fair value.

23.—(1) The Minister may reduce the price of any Public Lands sold by the Crown before the 1st day of July, 1890, where it appears that the land was sold at a price beyond its fair value, and that the price or part of it remains unpaid, but the reduction shall not exceed the amount which remains unpaid.

Abatement of interest.

(2) The Minister may also make such abatement as he may deem just, of the arrears of interest upon the unpaid purchase money of any Public Lands sold by the Crown before the 1st day of July, 1890.

Inspection of lands.

(3) Before any reduction or abatement is made under subsection 1, the land shall be examined and valued by an inspector appointed for that purpose by the Minister.

Persons entitled to a reduction.

(4) The reduction and abatement shall be confined to cases in which the purchaser from the Crown or some person claiming under him is in occupation of the land and is an actual settler on it, or on land adjacent to it.

Reduction in case of school lands not to affect share of Quebec.

(5) Such reductions and abatements in the case of School lands shall be made only in respect of, and in proportion to, the share or interest of Ontario in the lands, and the price thereof, and shall not extend to or affect the share or interest of the Province of Quebec in the lands or the price thereof. 3-4 Geo. V. c. 6, s. 23.

RETURNS.

Annual lists of lands granted, etc., to be furnished by Minister to county treasurers.

24. The Minister shall in the month of February in every year transmit to the treasurer of every county and of every local municipality in territory without county organization, a list of all land within the county or local municipality patented, located as free grants, sold or agreed to be sold by the Crown, or leased, or appropriated to any person, or in respect of which a license of occupation was issued during the next preceding calendar year, and the Minister shall in like manner inform every such treasurer of the cancellation of any license of occupation, sale, lease, location, or appropriation. 3-4 Geo. V. c. 6, s. 24.

Provincial Secretary to furnish Registrar with quarterly statement of Crown grants.

25.—(1) The Provincial Secretary shall, once in every three months, furnish to the Registrar of every registry division, a statement containing a list of the names of all persons, to whom letters patent have been issued for land within the registry division during the next preceding three months, and of all persons whose letters patent have been cancelled during that period with such general or particular descriptions of the land as the case may require.

(2) Where a list of patented lands, furnished under this section contains any land to which section 159 of *The Land Titles Act* applies, it shall be stated in the list that such land is subject to that Act, and in such case and also whenever the Provincial Secretary notifies the Registrar of a registry division of the issue of a patent of land to which that section applies, the Registrar shall in the abstract index enter the fact that the land is subject to *The Land Titles Act* and shall not thereafter receive for registration any instrument affecting the land. 3-4 Geo. V. c. 6, s. 25.

Duty of Registrar where land under The Land Titles Act.

Rev. Stat. c. 126.

OFFENCES AND PENALTIES.

26.—(1) No person holding an office in or under the Department, and no person employed in or under the Department, except in the case provided for by section 10, shall directly or indirectly purchase any right, title or interest in any Public Lands, or any land script, or deal or traffic in the same, either in his own name, or by the interposition of any other person, or in the name of any other person in trust for himself, or take or receive any fee or emolument for negotiating or transacting any business connected with the duties of his office or employment.

Employees of the Department not to traffic in public lands or take fees.

(2) Every person who contravenes the provisions of sub-section 1 shall incur a penalty of \$400. 3-4 Geo. V. c. 6, s. 26.

Penalty.

27. An Agent to receive applications for the sale or location of Public Lands who knowingly and falsely informs, or causes to be informed, any person applying to him to locate or purchase any land within his division that the same has already been located, appropriated or purchased, or refuses to accept from the person so applying an application to purchase the land, or where so entitled, to locate it according to the regulations, or does not forthwith transmit an application to the Department, shall be liable therefor to the person so applying, in the sum of \$5 for each acre of land which he offered to locate or purchase. 3-4 Geo. V. c. 6, s. 27.

Penalty on agent knowingly giving false information, etc.

MISCELLANEOUS.

28. Where by law or by any deed, lease or agreement relating to any Public Lands any notice is required to be given, or any act to be done, by or on behalf of the Crown, such notice may be given and such act may be done by the Minister or the Deputy Minister, or by a person acting under the authority of either of them. 3-4 Geo. V. c. 6, s. 28.

How notices required to be given may be given.

29.—(1) Affidavits required under this Act or intended to be used in reference to any claim, business or transaction in the Department, or in respect of which the Department is interested or which affects the revenue of Ontario under the

Before whom affidavits under this Act may be made.

control of the Department, may be taken before any person having authority to administer oaths or before the Clerk of any County or District Court, or before the Minister or Deputy Minister or any agent of the Department or before any person appointed for that purpose by the Minister or Deputy Minister, or before an Ontario Land Surveyor appointed by the Minister or Deputy Minister to inquire into or take evidence or report in any matter pending in the Department.

Rev. Stat.
c. 76.

(2) Such affidavits, if made out of Ontario, may be taken before any person having authority under *The Evidence Act* to administer oaths out of Ontario. 3-4 Geo. V. c. 6, s. 29.

Certified
copy of in-
strument to
be evidence.

Rev. Stat.
c. 29.

30. A copy of any instrument made or issued under the hand of the Minister or of a Deputy Minister or of any officer or agent of the Department under the authority of this Act or of *The Crown Timber Act*, or under the authority of the Regulations made under those Acts, purporting to be certified by the Minister, Deputy Minister, officer or agent as a true copy of such instrument, shall be *prima facie* evidence of the instrument and of its contents in all courts and before all officers and persons having by law or by the consent of parties authority to hear, receive, and examine evidence. 3-4 Geo. V. c. 6, s. 30.

Sales and
appropria-
tions of
water lots
may be
made.

31. The Minister may sell, lease and make appropriations of land covered with water in the harbours, rivers and other navigable waters in Ontario, under such conditions as he may deem proper, but not so as to interfere with the use of any harbour as a harbour, or with the navigation of any harbour, river or other navigable water. 3-4 Geo. V. c. 6, s. 31.

PART II.

FREE GRANTS TO ACTUAL SETTLERS.

Free grants
limited.

32. Except as hereinafter and in section 12 otherwise provided, no free grant of Public Lands shall be made. 3-4 Geo. V. c. 6, s. 32.

Free grants
to actual
settlers.

33. The Lieutenant-Governor in Council may set apart and appropriate any territory which he may deem suitable for settlement and cultivation, for the purpose of a free grant of the lands therein being made to actual settlers, under and subject to the regulations. 3-4 Geo. V. c. 6, s. 33.

Locatee
defined.

34. The person to whom land is allotted or appropriated as a free grant shall be deemed to be located for the land within the meaning of this Act, and is hereinafter called the locatee. 3-4 Geo. V. c. 6, s. 34.

35.—(1) The head of a family, with a child or children under eighteen years of age residing with him, may be located for a free grant to the extent of 160 acres in townships surveyed in sections of 640 acres or in lots of 320 acres, or to the extent of 200 acres in the remainder of the free grant territory. Right of head of family to free grant.

(2) A male of the age of eighteen years or upwards without a child, may be located for a free grant to the extent of 160 acres in townships surveyed in sections of 640 acres or in lots of 320 acres, or to the extent of 100 acres in the remainder of the free grant territory. Right of male, without child, to free grant.

(3) In townships surveyed in sections of 640 acres or lots of 320 acres, in addition to being located, as provided for by subsection 1, every head of a family having a child or children under eighteen years of age residing with him may purchase 80 acres, and in the remainder of the free grant territory 100 acres, adjacent to his location at 50 cents an acre, payable in cash. Right of locatee to purchase additional land.

(4) Where a person has made substantial improvements on two or more adjoining lots in the District of Kenora or the District of Rainy River, and the lots contain more land than he is entitled to locate and purchase, the Minister may sell to him at fifty cents per acre such additional land as under the circumstances the Minister may deem proper. Right to purchase in Kenora or Rainy River.

(5) Where it appears to the Minister that by reason of rock or swamp a lot or parcel of land containing 100 acres which he is about to allot does not contain that quantity of land that can be made available for farming purposes, he may increase the number of acres to be allotted to the locatee so that there shall be allotted to him 100 acres of farming land, but the quantity allotted shall in no case exceed 200 acres. Allowance for rock, lakes or swamp.

(6) The powers conferred on the Minister by the next preceding subsection may also be exercised in respect of land which has been located. In case of located land.

(7) Where the whole or an aliquot part of a section or lot is or is to be located, it shall be deemed for the purpose of the location to contain the quantity of land which according to the original survey it was intended to contain. Quantity in lot, etc., according to original survey to govern. 3-4

36. Before a person is located he shall make an affidavit, which shall be deposited with the agent to whom the application is made, stating that he has not been located for any land under this Part, and that he is of the age of eighteen years or upwards, that he believes the land for which he desires to be located is suitable for settlement and cultivation, and is not chiefly valuable for its pine trees or for its mines and minerals, and that the location is desired for his own Affidavit of person desiring location.

benefit, and for the purpose of actual settlement and cultivation of the land, and not, either directly or indirectly, for the use or benefit of any other person, or for the purpose of obtaining, possessing, or disposing of any of the pine trees growing or being on the land, or any benefit or advantage therefrom, or mines or minerals therein, and where the applicant is the head of a family, and has a child, or children under eighteen years of age residing with him or her, that fact shall be stated in the affidavit. 3-4 Geo. V. c. 6, s. 36.

Second location may be obtained.

37. Any person who has obtained letters patent under this Part may, on proving to the satisfaction of the Minister that he has *bona fide* and absolutely parted with the patented land, obtain another location. 3-4 Geo. V. c. 6, s. 37.

Patent not to issue before expiration of three years.

38.—(1) A patent shall not be issued for land located or sold under this Part until the expiration of three years from the date of the location or sale, or until the locatee or some one claiming under him, has performed the following settlement duties:—

Settlement duties required.

(a) has cleared and has under cultivation at least fifteen acres of the land of which at least two acres have been cleared and cultivated in each of the three years next after the date of the location;

(b) has built on the land a house, fit for habitation, of the dimensions of at least sixteen feet by twenty feet; and

(c) has actually and continuously resided upon and cultivated the land for the three years next after the date of the location or sale, and from thence to the time of the issue of the letters patent.

Effect of temporary absence.

(2) Absence from the land for not more than one month next after the date of the location or for not more than six months during any one year shall not be deemed for the purposes of clause (c) a cessation of residence if the land has been cultivated during that year:

Option as to settlement duties.

(3) Where additional land is purchased by a locatee under the provisions of section 37, the settlement duties may be performed either on the located or the purchased land or partly on both.

Rights to subsequent locations.

(4) Where a locatee has not been located for the full quantity of land for which he was entitled to be located, or, having been located for the full quantity, has afterwards become the head of a family with a child or children under eighteen years of age residing with him, he shall be entitled to be located in the former case for sufficient additional adjacent land to make up the full quantity for which he was entitled to be located, and in the latter case for sufficient additional adjacent land to make up the full quantity for which he would

have been entitled to be located, if at the time he was located he had been the head of a family having a child or children under eighteen years of age residing with him, but it shall not be necessary for him to perform settlement duties on the subsequently located land, if the settlement duties have been performed on the land first located.

(5) Where the settlement duties have not been performed or completely performed on the land first located, the Minister may, subject to the regulations, permit them to be performed or completed either on the land first located or the subsequently located land or partly on both. 3-4 Geo. V. c. 6, s. 38. Option in such cases as to duties.

39. If such settlement duties are not performed, the Minister may direct that the location be forfeited, and thereupon all rights of the locatee, and of every one claiming under him, in the land shall cease. 3-4 Geo. V. c. 6, s. 39. Location to be forfeited if settlement duties not performed.

40. If a person entitled to obtain a location under the provisions of this Part has, without objection by the Crown, for a period of four years or more occupied and has made the prescribed improvements upon one or more lots, not exceeding in quantity that which may be granted under this Part, before the land was opened for location as free grant land, or if the land was open for location, and has so occupied and improved the land but through inadvertence or oversight has not been located for it, the Minister if satisfied that the land is not chiefly valuable for its pine trees, subject to the regulations, may, after location under this Part, direct the issue of the letters patent upon proof of the performance of the prescribed settlement duties and without waiting for the expiration of three years from the date of the location. 3-4 Geo. V. c. 6, s. 40. In certain cases if occupant for four years not regularly located patent may issue before three years.

41. Subject to sections 38 and 40 and to the regulations, where the owner and occupant of land in the free grant territory, acquired otherwise than as a free grant, is desirous of obtaining a free grant under this Part of land adjacent to such first mentioned land, the Minister may dispense with the performance of the settlement duties on such adjacent land and may direct the immediate issue of letters patent therefor, if he is satisfied that there are at least 30 acres cleared upon such first mentioned land. 3-4 Geo. V. c. 6, s. 41. Settlement duties may be dispensed with in certain cases.

PINE TREES.

42.—(1) Subject to Section 52, pine trees standing or being upon land located or sold under Part II, shall be reserved from the location or sale, and shall remain the property of the Crown, and except in the case of land in the districts of Kenora and Rainy River, the letters patent for all land so located or sold shall contain a reservation of all Reservation of pine trees.

pine trees standing or being on the land and they shall remain the property of the Crown.

In Kenora and Rainy River pine trees to pass when patent issues.

Right to clear, etc.

(2) In the Districts of Kenora and Rainy River the pine trees remaining at the time of the issue of the letters patent on land located or sold shall pass to the patentee.

(3) The locatee, or purchaser, and those claiming under him may nevertheless cut and use such pine trees as may be necessary for the purpose of building, and fencing on the land so located or sold, and may also cut and dispose of all trees required to be removed in the actual clearing of the land for cultivation, but no pine trees except for such necessary building and fencing shall be cut beyond the limit of such actual clearing.

Pine trees sold to be subject to timber dues.

(4) Pine trees cut in the process of clearing, and sold or otherwise disposed of, shall be subject to the payment of the same dues as are at the time payable by the holders of licenses to cut timber.

Locatee of two or more lots may cut pine on any lot for building, fencing, etc.

(5) Where the land comprises two or more lots, or parts of two or more lots, the locatee or purchaser, and those claiming under him, may cut such pine trees as may be necessary for the purpose of such building and fencing, on any one or more of such lots or parts of lots, and may use pine trees on the lot on which they are cut or on any of the other lots or parts of lots, whether located or purchased at the same time or otherwise.

Right of timber licensees.

(6) Subject to subsections 2, 3 and 5, any person holding a license to cut timber on such land may at all times during the continuance of the license, and before or after the issue of the letters patent, enter upon the uncleared portion of such land, and cut, and remove such pine trees and make all necessary roads for that purpose and for the purpose of hauling in supplies, doing no unnecessary damage thereby. 3-4 Geo. V. c. 6, s. 42.

Payment by Crown to patentees of part of dues.

43.—(1) The patentee of free grant land located or sold after the 5th day of March, 1880, and his assigns, shall be entitled to be paid out of the Consolidated Revenue Fund, on all pine trees cut on such land subsequent to the 30th day of April next after the date of the patent, and upon which dues have been collected by the Crown, the sum of thirty-three cents for each one thousand feet, board measure, of saw-logs, and four dollars for each one thousand cubic feet of square or waney timber, and the Lieutenant-Governor in Council may make regulations for carrying out the provisions of this section.

Kenora and Rainy River.

(2) This section shall not apply to the Districts of Kenora and Rainy River. 3-4 Geo. V. c. 6, s. 43.

ALIENATION AND EXEMPTION FROM DEBT AND DEVOLUTION OF LAND.

44.—(1) Neither the locatee nor any one claiming under him, shall have power without the consent in writing of the Minister, to alienate, otherwise than by devise, or to mortgage or charge any land located as a free grant or any right or interest therein before the issue of the letters patent.

Land not to be alienated, etc., before issue of patent.

(2) Except as provided in the next following section, no alienation, otherwise than by devise, and no mortgage or charge of the land, or of any right or interest therein by the locatee after the issue of the letters patent, and within twenty years from the date of the location, and during the lifetime of the wife of the locatee, shall be valid or of any effect, unless the wife of the locatee is one of the grantors with her husband, nor unless the instrument is duly executed by her.

After issue of patent, alienation, etc., to be by locatee and wife jointly.

(3) Where the wife of a locatee is:

Conveyance of lands by locatee without concurrence of wife under certain circumstances.

(a) a lunatic or of unsound mind, and confined in a Hospital for the Insane; or

(b) has been living apart from her husband for two years under such circumstances as by law disentitle her to alimony; or

(c) has not been heard of for seven years under such circumstances as raise a legal presumption of death;

at any time after the issue of the letters patent a Judge of the High Court Division or a Judge of the County or District Court of the County or District in which the land or any part of it is situate, may by an order made in a summary way upon such evidence as to him seems meet, dispense with the concurrence of the wife for the purpose of conveying, mortgaging or charging the land.

(4) In the cases provided for by clauses (a) and (b) of subsection 3, notice of the application shall be personally served upon the wife unless the Judge otherwise directs.

Notice of application.

(5) The order may be made subject to conditions or directions for the benefit of the children of the locatee, and, subject thereto it shall operate to bar the right, title, and interest of the wife in the land to the same extent as if she being of sound mind had been one of the grantors with her husband, and had duly executed the conveyance, mortgage or charge. 3-4 Geo. V. c. 6, s. 44.

Conditions for benefit of children.

45.—(1) Neither the land nor any interest or right therein, shall in any event be or become liable for the satisfaction of any debt or liability contracted or incurred by the

Exemption from liability for debt before issue of patent.

locatee, his widow, heirs or devisees, before the issue of the letters patent.

Exemption
after issue
of patent.

(2) After the issue of the letters patent, and while the land, or any part of it, or any interest in it is owned by the locatee or his widow, heirs, or devisees, the same shall during the twenty years next after the date of the location be exempt from attachment, levy under execution, or sale for the payment of debts, and shall not be or become liable for the satisfaction of any debt or liability contracted or incurred before or during that period, except a debt secured by a valid mortgage or charge of the land made after the issue of the letters patent. 3-4 Geo. V. c. 6, s. 45.

Patents to
state date
of location,
etc.

46. In the body of the letters patent the name of the original locatee, the date of the location, and that the letters patent are issued under the authority of this Part shall be stated. 3-4 Geo. V. c. 6, s. 46.

On death
of locatee
widow to
have estate
during her
widowhood.
Widow may
elect to have
her dower.

47. On the death of the locatee, whether before or after the issue of the letters patent, all his then interest and right in the land shall descend to, and become vested in, his widow during her widowhood in lieu of dower, but the widow may elect to have her dower in the land in lieu of this provision. 3-4 Geo. V. c. 6, s. 47.

Exemption
not to extend
to
taxes.

48. Nothing in this Part shall exempt the land from levy or sale for rates or taxes legally imposed. 3-4 Geo. V. c. 6, s. 48.

The Minister
may remit
sums due
by settlers
in Free
Grant
Townships.

49. The Minister may, by remitting any sum due to the Crown in respect of his land by such settler, place any *bona fide* settler in free grant territory, who settled thereon before it was opened for settlement as free grant territory and who is in the occupation of the land, in the same position as if his land had been free grant land at the time he settled on it. 3-4 Geo. V. c. 6, s. 49.

PART III.

PROVISIONS OF GENERAL APPLICATION.

Power of
Minister to
open land
for location
and sale.

50.—(1) Where it appears to the Minister that any Public Lands not opened for settlement or sale are not chiefly valuable for their pine trees, the Minister may, with the approval of the Lieutenant-Governor in Council open such lands for location and sale under Part II, or for sale under Part I to actual settlers; and the pine trees shall thereafter be included in any location or sale under Part II, or sale under Part I, and the letters patent shall be issued accordingly.

Rights of
settler.

(2) A locatee or purchaser shall not be entitled to cut or dispose of the pine trees except for building and fencing,

and in the course of actual clearing, until he has been six months in residence and has built a house of the dimensions of 16 by 20 feet, and has six acres cleared and under crop.

(3) The rights of locatees and purchasers shall be subject to the rights of licensees to cut pine timber under licenses in force when the land is opened up for location or sale under this section. 3-4 Geo. V. c. 6, s. 50.

Rights of
licensees.

51. Where a township or part of a township is open for settlement under Part I or Part II the Lieutenant-Governor in Council may direct with regard to any part of the township or any particular lots therein located or sold after the date of the Order in Council that the mines and minerals shall be reserved to the Crown, and in the absence of any such direction the mines and minerals shall pass to the patentee when the land is patented. 3-4 Geo. V. c. 6, s. 51.

Mines and
minerals.

52.—(1) Upon the application of the purchaser of land in territory open for sale under Part I, or of a locatee or purchaser of land in territory to which section 50 does not apply, open for location and sale under Part II, and not under timber license, or of any one deriving title under him, if it appears to the Minister that the land is not chiefly valuable for its pine trees, but is agricultural land and that the applicant is in actual residence on the land with substantial improvements, the Minister may direct that the pine trees be included in the location or sale, and the letters patent shall be issued accordingly.

Purchaser
of land may
apply to
have pine
trees or
mines and
minerals
included in
location.

(2) If the letters patent have been issued, the Minister may direct the issue of letters patent, granting such pine trees to the then owner of the land. 3-4 Geo. V. c. 6, s. 52.

Subsequent
grant
of pine.

53.—(1) In the case of land patented before the passing of this Act, the mines and minerals therein shall be deemed to have passed to the patentee by the letters patent, and every reservation thereof contained in the letters patent or by statute shall be void.

Mines and
minerals on
certain
lands to
be deemed
to have
passed to
patentee.

(2) Subsection 1 shall apply to lands hereafter patented, unless the mines and minerals are expressly reserved by the letters patent. 3-4 Geo. V. c. 6, s. 53.

Lands
hereafter
granted.

54. Sections 52 and 53 shall not apply where, before the passing of this Act, a mining claim has been staked out and recorded by, or has been leased or sold to any person other than the locatee or purchaser of the land, or a person deriving title under him under *The Mining Act of Ontario* or any Mining Act previously in force, but shall apply so as to release the rights of the Crown where the locatee or the purchaser or any one deriving title under him is the lessee or owner of the mining claim. 3-4 Geo. V. c. 6, s. 54.

Saving of
rights under
Mining Act.

Purchaser may apply to have pine trees released to him.

55. Upon the application of the locatee or purchaser of land in territory open for location and sale under Part II, who has obtained letters patent for the land or of any person deriving title under him, the Minister if satisfied that the land is not under timber license and has not more than 40,000 feet, board measure, of pine timber on it, may make an order releasing and discharging the land from the reservation of the pine timber thereon, and the order, or a certified copy of it, shall be registered in the proper registry division or Land Titles Office, and shall have the same effect as if the letters patent had not contained or been subject to any reservation of the pine trees. 3-4 Geo. V. c. 6, s. 55.

Act subject to Forest Reserves Act. Rev. Stat. c. 80.

56. This Act shall be subject to the provisions of *The Forest Reserves Act*. 3-4 Geo. V. c. 6, s. 56.

Right to make roads to be reserved in sales, etc.

57.—(1) In all sales, free grant locations, leases, licenses of occupation, mining claims and other dispositions of Public Lands or mining lands or mining rights, there shall be reserved to the Crown the right to construct on the land any colonization or other road or any road in lieu of or partly deviating from an allowance for road without making compensation therefor, and such right whether or not it is expressly reserved from the sale, location, lease, license or occupation, mining claim or other disposition of the land or by the letters patent when issued shall be deemed to be so reserved.

Not to apply to patented lands.

(2) Subsection 1 shall not apply where the land or the mining claim has been patented before the passing of this Act.

Right to take wood, gravel and other materials for roads.

(3) In all sales, free grant locations, leases, licenses of occupation, mining claims and other dispositions of Public Lands or mining lands or mining rights, where the letters patent have been issued containing a reservation of 5 per cent. of the area for roads, wood, gravel and other materials required for the construction or improvement of any colonization or other road or of any road in lieu of or partly deviating from an allowance for road, may be taken from the land without making compensation therefor or for the injury thereby done to the land from which they are taken, and where the letters patent have been issued without a reservation being made of 5 per cent. of the area for roads, wood, gravel and other materials required for the purposes hereinbefore mentioned may be taken from the land, but compensation shall be paid as provided by *The Ontario Public Works Act*.

In certain cases without making compensation.

In other cases making compensation.

Rev. Stat. c. 35.

Minister or person authorized by him may exercise rights.

(4) The rights mentioned in the preceding subsections may be exercised by the Minister or by any person authorized by him to exercise them on behalf of the Crown. 3-4 Geo. V. c. 6, s. 57.

58. In all sales, free grant locations, leases, licenses of ^{Reservation} occupation, mining claims and other dispositions of public ^{of water} lands, or mining lands or mining rights the Minister may ^{power on} reserve from sale any water power or privilege, and such area ^{Public} of land in connection therewith as he may deem necessary, ^{Lands.} for the erection of buildings and plant, and the development and utilization of the power, together with the right to lay out and use such roads as may be necessary for passage to and from such water power or privilege and land, and may, with the approval of the Lieutenant-Governor in Council, fix the terms and conditions upon which such water power or privilege and land may be sold or leased and developed.

3-4 Geo. V. c. 6, s. 58.

CHAPTER 29.

An Act respecting Timber on Public Lands.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Crown Timber Act*.
3-4 Geo. V. c. 8, s. 1.

"Interpretation."

2. In this Act,

"Department."

(a) "Department" shall mean Department of Lands, Forests and Mines.

"Minister."

(b) "Minister" shall mean Minister of Lands, Forests and Mines.

"Public Lands."

(c) "Public Lands" shall include lands heretofore designated as Crown Lands, School Lands and Clergy Lands. 3-4 Geo. V. c. 8, s. 2.

LICENSES TO CUT TIMBER ON PUBLIC LANDS.

Power to grant licenses to cut timber on Public Lands.

3.—(1) The Minister, or any officer or agent authorized by him to do so, may grant licenses to cut timber on the ungranted Public Lands, and timber on patented lands where the timber on them remains the property of the Crown, at such rates, and subject to such conditions, regulations and restrictions as may from time to time be prescribed by the Lieutenant-Governor in Council.

Orders in Council to be published.

(2) Notice of any Order in Council made under this section shall be published in the *Ontario Gazette*.

Period of license.

(3) No such license shall be granted for a longer period than twelve months from its date and if, in consequence of incorrectness of survey, or other error or from any other cause, a license is found to comprise lands included in a license of an earlier date, the license last granted shall be void in so far as it interferes with the one previously granted, and the holder or proprietor of the license so rendered void shall have no claim upon the Crown for indemnity or compensation by reason of such avoidance. 3-4 Geo. V. c. 8, s. 3.

Conflicting licenses.

Operation of license.

4.—(1) The license shall describe the land upon which the timber may be cut, and shall confer for the time being on the licensee the right to take and keep exclusive possession

of the land so described, subject to such conditions, regulations and restrictions as may be prescribed.

(2) The license shall vest in the holder all rights of property in all trees, timber and lumber cut within the limits specified in the license during the term thereof, whether the same are cut by authority of the holder of the license, or by any other person, with or without his consent. Effect of license.

(3) The license shall entitle the holder to seize such trees, timber or lumber where the same are found in the possession of any unauthorized person, and also to maintain an action against any wrongful possessor or trespasser, and to prosecute all trespassers and other offenders to punishment and to recover damages, if any. Right of licensee.

(4) All proceedings pending at the expiration of any license may be continued to final termination as if the license had not expired. Continuing proceedings after expiry of license.

(5) The rights conferred on the licensee under this section and on the grantee under subsection 2 of section 6, shall be subject to the rights to which the locatee or purchaser of the land and those claiming under him, are entitled under *The Public Lands Act*. 3-4 Geo. V. c. 8, s. 4. Rights of locatees and purchasers.
Rev. Stat. c. 28.

5. All sales of pine timber limits, and all licenses or permits to cut pine timber on such limits shall be made, issued or granted subject to the conditions set out in the first regulation in Schedule A, and it shall be sufficient if such conditions are referred to as "The Manufacturing Condition" in all notices, licenses, permits, agreements or other writings. 3-4 Geo. V. c. 8, s. 5. "Manufacturing condition."

6.—(1) All sales of timber limits, which confer the right to cut and remove spruce or other soft wood, trees or timber, other than pine, suitable for manufacturing pulp or paper, and all licenses or permits to cut the same on the limits so sold, and all agreements entered into or other authority conferred by the Minister by virtue of which such wood, trees or timber may be cut upon Public Lands, shall be made, issued or granted subject to the conditions set out in the first regulation in Schedule B, and it shall be sufficient if such conditions are referred to as "The Manufacturing Condition," in all notices, licenses, permits, agreements or other writings. Sales of timber limits and licenses issued to be subject to manufacturing condition.

(2) The Minister may with the approval of the Lieutenant-Governor in Council grant rights to cut pulp wood upon any of the lands mentioned in section 3 for such periods and for such consideration and subject to such conditions, regulations and restrictions as the Minister may deem proper but every such grant shall be subject to the manufacturing condition mentioned in subsection 1. Minister may grant rights to cut pulp wood.

Grants
heretofore
made
validated.

(3) All such grants heretofore made shall be as valid and binding as if this section had been in force at the time of the making of the grant. 3-4 Geo. V. c. 8, s. 6.

Manufac-
turing regu-
lations to
apply to all
licenses or
permits.

7. The regulations contained in Schedules A and B shall respectively apply to all licenses or permits. 3-4 Geo. V. c. 8, s. 7.

Further regu-
lations.

8. The Lieutenant-Governor in Council may make any further or additional regulations which he may deem necessary to enable the Minister to carry into effect the object and intent of the regulations contained in Schedules A and B. 3-4 Geo. V. c. 8, s. 8.

Grants of
timber
licenses
prior to
completion
of settle-
ment duties.
Rev. Stat.
c. 28.

9. The Minister at any time before the completion of the settlement duties and the filing in the Department of proof of such completion may grant licenses covering or including lands sold by the Crown under *The Public Lands Act*, and the timber thereon. 3-4 Geo. V. c. 8, s. 9.

Validity of
such licenses.

10. All such licenses shall be good, valid and effectual though issued or renewed after the expiry of three years from the date of the sale of such lands. 3-4 Geo. V. c. 8, s. 10.

TIMBER ON ROAD ALLOWANCES.

Government
road allow-
ances in-
cluded in
license to
be deemed
ungranted
lands.
Rights of
licensee.

11.—(1) Every Government road allowance included in a timber license, granted under section 3, shall be deemed to be ungranted Public Lands, within the meaning of that section.

(2) The licensee shall have all the rights in respect of every such road allowance, and the trees, timber and lumber thereon, or cut thereon, as were, or by section 3, might be conferred upon him in respect of any other Public Lands embraced in such license, and the trees, timber and lumber thereon, or cut thereon, except that he shall not be entitled to take or keep exclusive possession of such road allowance.

By-laws not
to prevail
against
license.

(3) No by-law of any Municipal Council for preserving, selling, or otherwise appropriating or disposing of the timber or trees, or any part thereof, on a Government road allowance included in any license, shall have any force or effect against such license. 3-4 Geo. V. c. 8, s. 11.

Township
Councils
entitled to
percentage
of timber
dues.

12.—(1) Where a by-law of the council of a township, organized as a separate municipality, or of any united townships for preserving or selling the timber or trees on the Government road allowances within such township, or united townships included in any license is in force, the corporation of such township or united townships shall be entitled to be paid out of the Consolidated Revenue Fund a sum equal to two per centum of the dues received for or in respect of the timber or saw-logs cut within the township, or united

townships under the authority of the license, while the by-law was in force.

(2) Unless the Minister otherwise directs, no corporation shall be entitled to such payment unless a certified copy of the by-law, accompanied by an affidavit of the Reeve or Clerk, verifying the copy and the date of the passing of the by-law, is filed in the Department within six months from the passing of the by-law.

Terms on which Councils may obtain the percentage.

(3) The affidavit may be taken before any person or officer who, under *The Public Lands Act*, is authorized to take affidavits.

Rev. Stat. c. 28.

(4) All money so paid to a corporation shall be expended in the improvement of the highways situate within the township or within that one of the united townships in respect of which such money was paid. 3-4 Geo. V. c. 8, s. 12.

Councils to expend percentage on highways.

OBLIGATIONS OF PERSONS OBTAINING LICENSES.

13. Every person who cuts saw-logs on Public Lands shall cause to be kept in each shanty, camp, or lumbering establishment such records and books as may be prescribed by the Minister, which shall be open at all times to the inspection of any Crown timber agent, Crown timber Ranger, or other officer of the Department, and shall at the end of the season be verified by the oath of the person who made the entries therein and be delivered to an officer of the Department authorized to receive the same. 3-4 Geo. V. c. 8, s. 13.

Persons cutting saw-logs to keep record and deliver same to officer of Department.

14.—(1) Every person who obtains a license shall, at the expiration thereof, make to the officer or agent who grants the same, or to the Minister, a return of the number and kind of trees cut, and of the quantity and description of saw-logs, or of the number and description of sticks of square timber manufactured and carried away under the license; and the return shall be verified by the oath of the holder of the license, or his agent, or by his foreman.

Returns to be made by licensees.

(2) Every person who refuses or neglects to furnish such return or evades or attempts to evade any regulation made by the Lieutenant-Governor in Council, shall be deemed to have cut without authority, and the timber made shall be dealt with accordingly. 3-4 Geo. V. c. 8, s. 14.

Consequence of failure to make return.

15.—(1) All timber cut under a license shall be liable for the payment of the Crown dues thereon, with interest thereon and expenses so long as and wherever the timber or any part of it may be found in Ontario, whether in the original logs or manufactured into deals, boards or other stuff.

Following timber cut under license until dues are paid.

Dues may be levied on other timber, etc. cut under license.

(2) When any license holder is in default for, or has evaded the payment of dues to the Crown on any part of his timber or saw-logs, such dues, interest and expenses may be levied on any other timber or saw-logs, or their manufactured product, belonging to the defaulter, and cut under license, together with the dues thereon, and interest and the expenses incurred.

Timber, etc., may be followed.

(3) All officers or agents entrusted with the collection of such dues may follow all such timber, saw-logs or their manufactured product and may seize and detain the same wherever found until the dues, interest and expenses are paid or secured. 3-4 Geo. V. c. 8, s. 15.

Timber removed into Quebec.

16. Nothing in this Act shall repeal the provisions of section 4 of chapter 23 of the Consolidated Statutes of Canada, as regards timber removed into the Province of Quebec. 3-4 Geo. V. c. 8, s. 16.

Sale of timber seized for non-payment of dues.

17. If timber, saw-logs or their manufactured product seized and detained for non-payment of Crown dues remain more than two months in the custody of the officer or agent without the dues, interest and expenses being paid, the Minister with the previous sanction of the Lieutenant-Governor in Council, may direct a sale of the same to be made after sufficient notice; and the owner shall be entitled to the proceeds of the sale, after deducting the amount of dues, interest and expenses and the costs incurred. 3-4 Geo. V. c. 8, s. 17.

The giving of bonds or notes not to affect the lien on the timber.

18. Bonds or promissory notes taken for the Crown dues either before or after the cutting of the timber, as collateral security, or to facilitate collection, shall not affect the lien of the Crown on the timber, but the lien shall subsist until the dues are actually paid. 3-4 Geo. V. c. 8, s. 18.

LIABILITY OF PERSONS CUTTING WITHOUT A LICENSE.

Persons cutting timber without license to acquire no rights thereby.

19.—(1) A person who without authority cuts or employs or induces any other person to cut, or assists in cutting timber of any kind on Public Lands, or removes or carries away, or employs or induces or assists any other person to remove or carry away, merchantable timber of any kind, so cut, shall not acquire any right to the timber so cut, or any claim to any remuneration for cutting, preparing it for market, or conveying it to or towards market.

Penalty where timber illegally cut cannot be seized.

(2) Where the timber or the saw-logs made have been removed by any person out of the reach of the officers of the Department, or it is otherwise found impossible to seize them such person shall in addition to the loss of his labour and disbursements, be liable to pay \$15 for each tree other than pine and \$25 for each pine tree cut or caused to be cut and carried away, together with the full value of the timber or logs so cut or caused to be cut and carried away.

(3) Such sum shall be recoverable at the suit and in the name of the Minister, and the burden of proving his authority to cut shall be upon the person sued. 3-4 Geo. V. c. 8, s. 19.

Action.

Onus of proof.

20.—(1) Where information, satisfactory to the Minister is received by him or by an officer or agent of the Department that any timber has been cut without authority on Public Lands, the Minister, officer or agent, may seize or cause to be seized the timber so reported to have been cut without authority, wherever it is found, and may place it under proper custody, until a decision can be had in the matter from competent authority.

Timber alleged to be unlawfully cut may be seized.

(2) Where the timber has been made up with other timber into a crib, dam or raft, or in any other manner has been so mixed at the mills or elsewhere, as to render it impossible or very difficult to distinguish the timber so cut without authority, from other timber with which it is mixed, the whole of the timber so mixed shall be deemed to have been cut without authority on Public Lands, and until satisfactorily separated by the owner shall be liable to seizure and forfeiture accordingly. 3-4 Geo. V. c. 8, s. 20.

Timber so cut and mixed with other timber.

SEIZURE OF TIMBER, ETC.

21. Any officer or person who, in the discharge of his duty under this Act, seizes timber may in the name of the Crown call in any assistance necessary for securing and protecting it. 3-4 Geo. V. c. 8, s. 21.

Seizing officer may command assistance.

22. Where timber is seized for non-payment of Crown dues, or for any other cause of forfeiture, or where any prosecution is brought for any penalty or forfeiture under this Act, and a question arises whether the dues have been paid, or whether the timber was cut on Public Lands, the burden of proving payment, or that the timber was not cut on Public Lands, as the case may be, shall lie on the owner or claimant of the timber. 3-4 Geo. V. c. 8, s. 22.

Onus of proof on claimant or owner.

23.—(1) All timber seized shall be forfeited unless the person from whom it was seized, or the owner of it, within one month from the day of seizure, gives notice to the seizing officer or nearest officer or agent of the Department that he claims or intends to claim it.

Forfeiture if not claimed within one month.

(2) Failing notice, the officer or agent seizing shall report the circumstances to the Minister, who may order the sale of the timber, by the officer or agent, after a notice posted up at or near the place of seizure at least thirty days before the sale.

Sale in default of claim.

Order for
delivery of
timber to
claimant
on security
being given.

(3) The alleged owner or claimant of the timber seized may, upon at least four days' notice to the Minister, apply to a Judge of the County or District Court of the County or District in which the timber is, for an order for the delivery of the timber to him, and the Judge on receiving security by bond of the alleged owner or claimant, with two good and sufficient sureties, to be approved by the Minister, or by the officer or agent, in such sum as shall also be so approved to pay double the value of the timber in case the cause of forfeiture is established, may direct the delivery of such timber to such alleged owner or claimant.

Delivery
of bond.

(4) The bond shall be taken in the name of the Minister and shall be delivered to and be kept by him.

Trying
right of
seizure.

(5) The Judge, upon the application of either party, may at a time and place to be fixed by him, of which the other party shall have at least seven days' notice, try and determine whether such seizure was or was not justifiable, and shall either declare the timber to be forfeited or order it to be released.

When
seizure
upheld.

(6) If the timber is declared to be forfeited, the same shall be again delivered up to the Minister, or to the officer or agent of the Department, and the Minister may sell and dispose of it and apply the proceeds to the use of the Crown, or may allow the alleged owner or claimant to take the timber, upon the payment of such sum, for the use of the Crown as the Minister shall fix and determine.

When
forfeited.

(7) If the timber seized is forfeited for non-payment of Crown dues, then upon payment to the Minister, by the alleged owner or claimant of the unpaid dues with interest thereon and the costs and expenses incurred by the Minister, the timber may be surrendered to the alleged owner or claimant, and the bond may be cancelled; otherwise the penalty of the bond shall be enforced and may be recovered. 3-4 Geo. V. c. 8, s. 23.

Forfeiture
of timber
in case of
fraud.

24. Every person who avails himself of any false statement or oath to evade the payment of Crown dues, shall forfeit the timber on which dues are attempted to be evaded. 3-4 Geo. V. c. 8, s. 24.

Agreements
for supply-
ing wood
or timber
from Crown
Lands for
manufactur-
ing of pulp,
etc.

25.—(1) Any agreement heretofore or hereafter entered into, by His Majesty or by the Minister with any person for the supply of wood or timber, to be used in the manufacture of pulp or similar material, to be taken from Public Lands shall not prevent His Majesty or the Minister from selling, leasing, granting or otherwise disposing of any of the wood or timber of the Crown not specifically sold or allotted to such person, or from issuing or granting licenses or permits to other persons to cut and take any wood or timber not so specifically sold or allotted, or from selling, leasing, granting or otherwise disposing of any Public Lands whether such

lands are or are not included in such allotments or agreements or in licenses issued in pursuance of them; and other agreements may be made with any other persons to cut and take wood or timber from the Public Lands for making pulp or for similar or other purposes, without rendering His Majesty or the Minister liable in damages in case of the exhaustion of the supply of such wood or timber, or of the inability of any person with whom a prior agreement was made to obtain a sufficient supply thereof during the whole period for which the agreement is to run or during which the supply of wood or timber is contemplated by any such agreement, unless in respect of any quantity so specifically sold or actually allotted, or the wood and timber upon specified lands actually allotted, or agreed to be allotted to or for such person and no claim or demand against His Majesty or the Minister shall be made or maintained through or by reason of such sale or other disposition.

(2) No such agreement shall extend beyond the period of twenty-one years from its date. 3-4 Geo. V. c. 8, s. 25.

Agreement
not to
extend
beyond 21
years.

26.—(1) Whenever it shall be made to appear to the Minister that the operations of any holder or holders of a Timber License, Pulp Concession, Permit or other authority to cut timber are or are likely to be so conducted as to endanger any standing timber or cause the destruction thereof by fire, he shall have power by a writing under his hand to suspend the operation of the License, Pulp Concession, Permit or other authority at any time between the 25th day of April and the first day of August for such period as he shall deem expedient, and during such period all cutting of timber by the Licensee or other holder, his servants or agents, shall cease unless and until express leave therefor shall be granted by said Minister.

Suspension
of licenses,
etc., from
25th April to
1st August
in case of
danger of
fire.

(2) Any violation of this provision shall render the licensee or other holder liable to a penalty of not less than \$10 or more than \$100.

Penalty.

(3) The Minister may in his discretion in case of such violation declare the License, Pulp Concession, Permit or other authority to cut timber to be forfeited, and all rights of the holder or holders thereof shall thereupon immediately determine, but such forfeiture shall in no way affect the liability of the holder or holders for any payments due the Crown in respect of timber cut or otherwise in connection therewith, and the right of the Crown to proceed under this Act to collect the same shall remain as if no such forfeiture had taken place.

Forfeiture
of license,
etc., in case
of disobedience.

(4) The Lieutenant-Governor in Council may make such regulations as he may deem necessary or proper to regulate the cutting of timber on Crown Lands between the twenty-fifth day of April and the first day of August, and may

Regulations.

prescribe penalties for the contravention of any such regulations. 3-4 Geo. V. c. 8, s. 26 (1-4).

Recovery of
penalties

Rev. Stat.
c. 90.

27. The penalties imposed by or under the authority of this Act or of the Regulations shall be recoverable under *The Ontario Summary Convictions Act*. 3-4 Geo. V. c. 8, s. 26 (5).

Act subject
to
Rev. Stat.
c. 30.

28. This Act shall be subject to the provisions of *The Forest Reserves Act*. 3-4 Geo. V. c. 8, s. 27.

SCHEDULE A.

MANUFACTURING CONDITIONS—PINE TREES.

1. All pine trees which may be cut into logs or otherwise under the authority of a license or permit to cut pine timber shall, except as hereinafter provided, be manufactured into sawn lumber in Canada, that is to say, into boards, deals, joists, lath, shingles or other sawn lumber, or into waney, board or square or other timber; and such condition shall be kept and observed by the holder of any such license or permit, and every other person who cuts or causes to be cut pine trees under the authority thereof, and all pine trees so cut into logs or otherwise, shall be so manufactured in Canada.

2. If any holder of a timber license or permit, or any servant or agent of such holder, or any person acting for him, or with his authority or permission, violates or refuses to keep and observe the provisions of the next preceding regulation, the license or permit as to the berth, territory or lot included in the license or permit, on which or on any part of which the pine trees were cut, and in respect of which or any part of which there was a breach of such regulation or a neglect or refusal to observe or keep it, shall be suspended and held in abeyance, and shall not be re-issued, nor shall a new license be issued unless and until so directed by the Lieutenant-Governor in Council, and then only upon such terms and conditions as he may prescribe.

3. The Minister, his officers, servants and agents may do all things necessary to prevent a breach of such regulation, and to secure compliance with it, and may, for that purpose take, seize, hold and detain all timber and logs cut on the berth, territory or lot included in the license or permit, which it appears to the Minister it is not the intention of the holder of the license or permit or the owner or person in possession of them to so manufacture or cause to be so manufactured in Canada, or to dispose of to others who will cause them to be so manufactured in Canada until security is given to His Majesty satisfactory to the Minister that the regulation will be kept and observed, and that such logs and timber will be so manufactured in Canada; and in the event of the neglect or refusal to give such security within four weeks after notice of the seizure and demand of security by or on behalf of the Minister, the Minister may sell, or cause to be sold, such logs and timber by public auction, after due advertisement, to some person who will give such security to His Majesty as the Minister may require that such logs and timber shall be so manufactured in Canada.

4. The proceeds of such logs and timber shall, after the sale and after deducting all expenses of such seizure and sale, and any sum owing to His Majesty for or in respect of any timber dues, trespass dues, ground rent, or on account of the purchase of any timber or timber berth or land by such holder, owner or person in possession, be paid over to the person entitled to the same.

5. Nothing in the preceding regulations which requires pine logs or timber to be manufactured in Canada, shall apply to logs or timber cut and in use in Canada for any purpose for which logs or timber in the unmanufactured state, are or may be used.

6. These regulations shall not apply to the east half of the township of Aweres, in the District of Algoma, containing $18\frac{1}{2}$ square miles, nor to 22 square miles in the District of Thunder Bay, composed of berths 2, 3 and 4 of the timber sale of 1890.

3-4 Geo. V. c. 8, Sched. A.

SCHEDULE B.

MANUFACTURING CONDITIONS—SPRUCE, OTHER SOFT WOOD, TREES OR TIMBER (NOT BEING PINE.)

1. All spruce or other soft wood, trees or timber, not being pine, suitable for manufacturing pulp or paper, cut under the authority of a license or permit shall, except as hereinafter provided, be manufactured in Canada, that is to say, into merchantable pulp or paper, or into sawn lumber, woodenware, utensils, or other articles of commerce or merchandise as distinguished from the spruce or other timber in its raw or unmanufactured state; and such condition shall be kept and observed by the holder of any such license or permit, and by every person who cuts or causes to be cut any such spruce, soft wood, trees or timber, under the authority thereof, and all such spruce, soft wood, trees or timber, cut into logs or lengths or otherwise, shall be so manufactured in Canada.

2. The cutting of spruce or other soft wood, trees or timber, not being pine, suitable for manufacturing pulp or paper, into cordwood, or other lengths, shall not be deemed to be manufacturing the same within the meaning of this regulation.

3. If any holder of a license or permit, or any servant or agent of such holder, or any person acting for him, or with his authority or permission, violates or refuses to keep and observe the foregoing regulations, the license or permit to cut spruce or other soft wood, trees or timber, not being pine, as to the berth, territory, or lot included in this license or permit on which or any part of which the same was cut, and in respect of which or any part of which there was a breach of such regulations or a neglect or refusal to observe or keep them shall be suspended and held in abeyance, and shall not be re-issued, nor shall a new license or permit be issued unless and until so directed by the Lieutenant-Governor in Council, and then only upon such terms and conditions as he may prescribe.

4. The Minister, his officers, servants and agents may do all things necessary to prevent a breach of such regulations and to secure compliance with them, and may for that purpose, take, seize, hold and detain all logs, timber or wood so cut, and which it appears to the Minister it is not the intention of the holder of the license or permit, or the owner or person in possession of them to manufacture, or cause to be so manufactured in Canada, or to dispose of to others who will cause them to be so manufactured in Canada until security is given to His Majesty satisfactory to the Minister that the regulations will be kept and observed, and that such logs, timber or wood will be so manufactured in Canada; and in the event of the neglect or refusal to give such security within four weeks after notice of the seizure and demand of security by or on behalf of the Minister, the Minister may sell or cause to be sold

such logs, timber or wood by public auction after due advertisement to some person who will give such security to His Majesty as the Minister may require that they shall be so manufactured in Canada.

5. The proceeds of such logs, timber or wood shall, after the sale and after deducting all expenses of such seizure and sale, and any sum owing to His Majesty for or in respect of any timber dues, trespass dues, ground rent, or on account of the purchase of any timber or timber berth or limit by such holder, owner, or person in possession, be paid over to the person entitled to the same.

6. Nothing in the preceding regulations which requires spruce, soft-wood, trees, or other timber, not being pine, suitable for manufacturing pulp or paper, to be manufactured in Canada, shall apply to logs, timber or wood cut and in use in Canada for fuel, building or other purposes for which logs, timber or wood in the unmanufactured state are or may be used.

7. These regulations shall not apply to the east half of the township of Aweres, in the District of Algoma, containing 18½ square miles.

3-4 Geo. V. c. 8, Sched. B.

CHAPTER 30.

An Act respecting Forest Reserves.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Forest Reserves Act*. Short title.
10 Edw. VII. c. 8, s. 1.

2. The Lieutenant-Governor in Council may by proclamation set apart any portion of the public domain as a Crown Forest Reserve. Power to set apart Reserves.
10 Edw. VII. c. 8, s. 2.

3. From and after the date of such proclamation no land within any such Reserve shall be located, sold, leased or otherwise disposed of for purposes of agricultural settlement, and, except under regulations to be made by the Lieutenant-Governor in Council, no person shall use or occupy any such land, prospect for minerals, conduct mining operations, hunt, fish, shoot, trap, spear, or carry or use firearms or explosives within or upon such Reserve. Lands reserved not to be located, sold, etc.
10 Edw. VII. c. 8, s. 3.

4.—(1) Every Crown Forest Reserve shall be under the control and management of the Minister of Lands, Forests and Mines, and the Lieutenant-Governor in Council may make regulations for its protection, care and management. Control and management.

(2) The regulations shall be published for four consecutive weeks in the *Ontario Gazette* and shall immediately thereafter have the force of law and shall be laid before the Assembly within the first two weeks of the session next after the making thereof. Publication of regulations.
10 Edw. VII. c. 8, s. 4.

5. Timber on any portion of a Crown Forest Reserve damaged by fire, or which has attained mature growth, may be offered at public sale, subject to such regulations as may be made by the Lieutenant-Governor in Council. Sale of timber after damage by fire on Reserves.
10 Edw. VII. c. 8, s. 5.

6. Whenever it is deemed expedient to establish a site for a town, or for any purpose other than that of agricultural settlement, within the limits of a Crown Forest Reserve the Lieutenant-Governor in Council may withdraw the lands comprised in the description of such proposed site from such Crown Forest Reserve, and thereafter this said Act shall no longer apply to such lands. Lieut.-Governor may withdraw lands for townsite purposes.
10 Edw. VII. c. 8, s. 6; 3-4 Geo. V. c. 9, s. 1.

Penalty.

7. For a violation of any provision of this Act or of any regulation made thereunder the offender, in addition to any other liability, shall incur a penalty of not more than \$50 recoverable under *The Ontario Summary Convictions Act*, and shall also be liable for all damages resulting from any such violation to be recovered in any court of competent jurisdiction. 10 Edw. VII. c. 8, s. 7.

Rev. Stat.
c. 90.

Surrender of
cut over
timber land.

8.—(1) The Minister, for the purpose of creating a Crown Forest Reserve, may arrange with any holder of a timber limit which has been cut over and upon which young pine is growing, or which the Minister is satisfied will generally reproduce pine timber, for the surrender of such limit or any part thereof upon such terms and conditions as to the remission of any timber dues or ground rent or any part thereof which may be due or owing to the Crown in respect thereof, and upon such other conditions as may be set forth in the report of the Minister and approved by the Lieutenant-Governor in Council, but no payment of money shall be made for any such surrender until an appropriation for that purpose has been made by this Legislature.

Order in
Council and
report to be
laid before
Assembly.

(2) The Order in Council and the report of the Minister shall be laid before the Assembly within the first two weeks of the session next after the date of the Order in Council. 10 Edw. VII. c. 8, s. 8.

CHAPTER 31.

An Act for the Protection of the Public Interests in
the Bed of Navigable Waters.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Bed of Navigable Waters* Short title.
Act. 1 Geo. V. c. 6, s. 1.

2. Where land bordering on a navigable body of water or stream has been heretofore, or shall hereafter, be granted by the Crown, it shall be presumed, in the absence of an express grant of it, that the bed of such body of water or stream was not intended to pass to the grantee of the land, and the grant shall be construed accordingly and not in accordance with the rules of the English Common Law. 1 Geo. V. c. 6, s. 2.

3. Section 2 shall not affect the rights, if any, of a grantee from the Crown or of any person claiming under him, where such rights have heretofore been determined by a court of competent jurisdiction in accordance with the rules of the English Common Law, or of a grantee from the Crown, or any person claiming under him who establishes to the satisfaction of the Lieutenant-Governor that he or any person under whom he claims has previous to the 24th day of March, 1911, developed a water power or powers under the *bona fide* belief that he had the legal right to do so, provided that he may be required by the Lieutenant-Governor in Council to develop the said power or powers to the fullest possible extent, and provided that the price charged for power derived from such water power or powers may from time to time be fixed by the Lieutenant-Governor in Council; and the Lieutenant-Governor in Council may direct that letters patent granting such right be issued to such grantee or person claiming under him, under and subject to such conditions and provisions as may be deemed proper for insuring the full development of such water power or powers, and the regulation of the price to be charged for power derived from them. 1 Geo. V. c. 6, s. 3.

4. This Act shall not apply to the bed of the river where it runs through Lot 8 in the 6th Concession of the Township of Merritt in the District of Sudbury. 1 Geo. V. c. 6, s. 4.

Lieutenant-Governor may deal with special cases.

5. Notwithstanding anything herein contained the case of any person setting up on special grounds a claim to receive from the Crown a grant or lease of any part of the bed of a navigable body of water or stream shall be dealt with by the Lieutenant-Governor in Council as he may deem fair and just. 1 Geo. V. c. 6, s. 5.

CHAPTER 32.

An Act respecting Mines and Mining.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Mining Act of Ontario*. Short title.
8 Edw. VII. c. 21, s. 1.

2. In this Act,

Interpretation.

(a) "Agent" where it occurs in Parts IX and X shall "Agent." mean any person having, on behalf of the owner, the care or direction of a mine or of any part thereof.

(b) "Commissioner" shall mean the Mining Commissioner. "Commissioner."

(c) "Crown lands" shall not include land in the actual use "Crown-lands." or occupation of the Crown, or of any Public Department of the Government of Canada, or of Ontario, or of any officer or servant thereof, or under lease or license of occupation from the Crown or the Minister of Lands, Forests and Mines, or set apart or appropriated by lawful authority for any public purpose or vested in the Temiskaming and Northern Ontario Railway Commission.

(d) "Department" shall mean the Department of Lands, "Department." Forests and Mines.

(e) "Deputy Minister" shall mean the Deputy Minister of "Deputy Minister." Mines.

(f) "In place" when used in reference to mineral shall "In place." mean in the place or position where originally formed in the solid rock, as distinguished from being in loose, fragmentary or broken rock, boulders, float, beds or deposits of gold or platinum-bearing sand, earth, clay, or gravel, or placer.

(g) "Inspector" shall include an inspector appointed "Inspector." under this Act, for a Mining Division or any part thereof, or for Ontario, and any officer having the powers of an inspector.

(h) "Licensee" shall mean a person, mining partnership "Licensee." or company holding a miner's license issued under this Act or any renewal thereof.

(i) "Machinery" shall include steam and other engines, "Machinery." boilers, furnaces, stamps and other crushing apparatus, winding and pumping gear, chains, trucks, tramways, tackle,

blocks, ropes and tools, and all appliances used in or about or in connection with a mine.

“ Mine.”

(j) The noun “mine” shall include any opening or excavation in, or working of, the ground for the purpose of winning, opening up or proving any mineral or mineral-bearing substance, and any ore body, mineral deposit, stratum, soil, rock, bed of earth, clay, gravel or cement, or place where mining is or may be carried on, and all ways, works, machinery, plant, buildings and premises below or above ground, belonging to, or used in connection with, the mine, and also for the purposes of Parts IX and X, any excavation or opening in the ground made for the purpose of searching for mineral, and any roast yard, smelting furnace, mill, work or place used for or in connection with crushing, reducing, smelting, refining or treating ore, mineral or mineral-bearing substance.

“ Mine,”
“ mining.”

(k) The verb “mine” and the word “mining” shall include any mode or method of working whereby the soil or earth or any rock, stone or quartz may be disturbed, removed, washed, sifted, roasted, smelted, refined, crushed or dealt with for the purpose of obtaining any mineral therefrom, whether the same may have been previously disturbed or not, and also for the purposes of Parts IX and X of this Act all operations and workings mentioned in paragraph (j) of this section.

“ Mineral.”

(l) “Mineral” shall include coal, gas, oil and salt.

“ Mining
lands.”

(m) “Mining lands” shall include lands and mining rights patented or leased under or by authority of any statute, regulation, or Order in Council, respecting mines, minerals or mining, and also lands or mining rights located, staked out, used or intended to be used for mining purposes.

“ Mining
rights.”

(n) “Mining rights” shall mean the ores, mines and minerals on or under any land where the same are or have been dealt with separately from the surface.

“ Minister.”

(o) “Minister” shall mean the Minister of Lands, Forests and Mines.

“ Owner.”

(p) “Owner” when used in Parts IX and X of this Act shall include every person, mining partnership, and company being the immediate proprietor or lessee or occupier of a mine, or of any part thereof, or of any land located patented or leased as mining lands but shall not include a person, or a mining partnership or company receiving merely a royalty, rent or fine from a mine or mining lands, or being merely the proprietor of a mine or mining lands subject to a lease, grant or other authority for the working thereof, or the owner of the surface rights and not of the ore or minerals.

“ Patent.”

(r) “Patent” shall mean a grant from the Crown in fee simple or for any less estate made under the Great Seal.

(s) "Prescribed" shall mean prescribed by this Act or by "Prescribed." Order in Council or by rule or regulation made under the authority of this Act.

(t) "Recorder" shall mean the Mining Recorder of the "Recorder." Mining Division in which the land in respect of which an act, matter or thing is to be done are situate.

(u) "Regulation" shall mean a regulation made by the "Regulation." Lieutenant-Governor in Council under the authority of this Act.

(v) "Shaft" shall include a pit. "Shaft."

(w) "Surface rights" shall mean land granted, leased or "Surface rights." located for agricultural or other purposes, the ores, minerals and mines whereof or under the surface whereof are reserved to the Crown.

(x) "Valuable mineral in place," shall mean a vein, lode "Valuable mineral." or deposit of mineral in place appearing at the time of discovery to be of such a nature and containing in the part thereof then exposed such kind and quantity of mineral or minerals in place, other than limestone, marble, clay, marl, peat or building stone, as to make it probable that the vein, lode or deposit is capable of being developed into a producing mine likely to be workable at a profit. 8 Edw. VII. c. 21, s. 2.

APPLICATION OF ACT.

3.—(1) Applicants for mining lands who had prior to the 14th day of May, 1906, complied with the provisions of Rights of applicants preserved. Chapter 36 of *The Revised Statutes of Ontario, 1897*, or regulations thereunder respecting applications for such land and whose applications were pending before the Department on such date may prosecute their applications in the same manner and may acquire the same title to such land as if *The Mines Act, 1906*, and this Act had not been passed.

(2) Nothing herein contained shall affect the sale, lease or Sales, etc., for other purposes not affected. location, for agricultural or other purposes, of any land opened for sale or free grant under *The Public Lands Act*, or any Act, Order in Council or Regulation respecting the Rev. Stat. c. 28. sale and disposal of such land. 8 Edw. VII. c. 21, s. 3.

BUREAU OF MINES.

4. The Bureau of Mines established in connection with the Bureau of Mines, — Department, to aid in promoting the mining interests of Deputy Minister. Ontario, shall be continued, and the Deputy Minister shall have charge thereof under the direction of the Minister. 8 Edw. VII. c. 21, s. 4.

5. The Deputy Minister shall have all the powers, rights Power of Deputy Minister. and authority of an inspector, and such other powers, rights and authority for carrying into effect the provisions of this

Act as may be assigned to him by regulation. 8 Edw. VII. c. 21, s. 5.

PROVINCIAL GEOLOGIST, ASSAYER, AND INSPECTORS.

Appointment
and duties of
Geologist,
Assayer, and
Inspectors.

Departmental
officers.

6.—(1) The Lieutenant-Governor in Council may appoint a Provincial Geologist, a Provincial Assayer and an Inspector or Inspectors, and such other officers and agents as he may deem necessary who shall be officers of the Bureau of Mines, and shall perform such duties as may be assigned to them by this Act or by regulation.

Geologist to
be *ex officio*
inspector.

(2) The Provincial Geologist shall be *ex-officio* an Inspector. 8 Edw. VII. c. 21, s. 6; 2 Geo. V. c. 8, s. 2.

MINING RECORDERS; THEIR DUTIES AND POWERS.

Mining
Recorder.

7. The Lieutenant-Governor may appoint for each Mining Division a Mining Recorder, who shall be an officer of the Bureau of Mines. 8 Edw. VII. c. 21, s. 7.

Books and
maps to be
kept by
Recorder.

8. Every Recorder shall keep such books for the recording of mining claims, quarry claims and working permit applications and other entries therein as may be prescribed by the Minister, and such books shall be open to inspection by any person on payment of a fee of 10 cents for each claim or application examined. He shall also keep displayed in his office a map or maps showing the territory included in his Mining Division, and shall mark thereon all claims as they are recorded, and also all areas applied for under the provisions of this Act relating to working permits, and also all such areas, to be specially distinguished, in respect in which a working permit has been issued, and there shall be no charge for examining the map. 8 Edw. VII. c. 21, s. 8.

Right to
inspect docu-
ments.

9. Every document filed in the Recorder's office shall, during office hours, be open to inspection by any one on payment of the prescribed fee. 8 Edw. VII. c. 21, s. 9.

Evidence of
records.

10. Every copy of or extract from an entry in any of such books, and of any document filed in the Recorder's office, certified to be a true copy or extract by the Recorder, shall be received in any court as *prima facie* evidence of the matter certified by him without proof of his appointment, authority or signature. 8 Edw. VII. c. 21, s. 10.

EMPLOYMENT OF EXPERTS, ETC.

Employment
of professors,
etc. in educa-
tional institu-
tions to inves-
tigate mineral
resources.

11. Notwithstanding anything in *The Public Service Act* the Minister may employ any professor, instructor, or other person engaged in any educational or other institution to investigate the mineral resources of Ontario, or for any work in connection with this Act, and may pay him for such services at such rate as may be agreed upon, out of any

money appropriated by the Legislature for that purpose.
8 Edw. VII. c. 21, s. 11.

GENERAL PROVISIONS AS TO OFFICERS.

12.—(1) No officer appointed under this Act shall directly or indirectly, by himself or by any other person, purchase or become interested in any Crown Lands, mining rights or mining claims, and any such purchase or interest shall be void. Officers not to be interested in Crown lands or mining claims.

(2) Any officer offending against the provisions of subsection 1 shall forfeit his office and shall, in addition thereto, incur a penalty of \$500 for every such offence, to be recovered in any court of competent jurisdiction by any person who sues for the same. 8 Edw. VII. c. 21, s. 12. Penalty.

13.—(1) A subpoena shall not issue out of any court requiring the attendance of the Deputy Minister, the Commissioner, the Provincial Geologist, the Provincial Assayer, or any Inspector, inspecting officer, or Recorder, or the production of any document in their official custody or possession without an order of the court or a judge thereof, or in matters before the Commissioner without a direction of the Commissioner. Certain officers not to be subpoenaed without order of judge.

(2) The Deputy Minister, the Commissioner, the Provincial Geologist, the Provincial Assayer, and any Inspector, inspecting officer, or Recorder shall not be bound to disclose any information obtained by him in his official capacity which a member of the Executive Council certifies ought not in the public interest to be divulged or cannot without prejudice to the interests of persons not concerned in the litigation be divulged, and all such information shall be privileged. 8 Edw. VII. c. 21, s. 13. Privilege as to official information.

14. The Commissioner and every Inspector, shall be *ex-officio* a Justice of the Peace for every county and district in Ontario and a Recorder in his division shall be *ex-officio* a Justice of the Peace for the county or district in which any part of his Division lies; and it shall not be necessary that they shall possess any residential or property qualification. 8 Edw. VII. c. 21, s. 14. Ex-officio Justices of the Peace.

15.—(1) A Recorder may appoint any number of constables not exceeding four, who shall be constables and peace officers for the purposes of this Act, during the terms and within the Mining Division for which they are appointed. Appointment of constables by Recorder.

(2) A constable so appointed shall be paid such fees and expenses as may be allowed by the Recorder, but such fees shall not exceed \$3 per day for the time certified by the Recorder. 8 Edw. VII. c. 21, s. 15. Fees of constables.

MINING COMMISSIONER.

Government
may appoint
Mining Com-
missioner.

16.—(1) The Lieutenant-Governor in Council may, from time to time, appoint an officer to be known as the Mining Commissioner, for the purposes of this Act, and all other Acts relating to mining.

To be barrister of ten years' standing.

(2) He shall be a barrister of at least ten years' standing at the bar of Ontario.

Not to practise in mining matters.

(3) He shall not practise as a barrister or solicitor in any matter arising under this Act, or act in any capacity as a legal agent or adviser in any such matter. 8 Edw. VII. c. 21, s. 16.

Deputy Minister may act as Commissioner.

(4) In case of his illness or absence from Ontario, the Deputy Minister of Mines may act in his stead. 2 Geo. V. c. 8, s. 3.

MINING DIVISIONS.

Mining Division,—Province to be divided into.

17.—(1) The Lieutenant-Governor in Council may divide the Province into Mining Divisions and may alter the number, limits and extent thereof.

(2) Every Order in Council made under this section shall be published in the *Ontario Gazette* and shall take effect from the date of the first publication thereof. 8 Edw. VII. c. 21, s. 17.

Claims and documents to be filed in Recorder's office.

18. Except as in this Act otherwise specially provided the Recorder's office shall be the proper office for filing and recording all applications, documents and other instruments required or permitted to be filed or recorded under the provisions of this Act, affecting any unpatented mining claim or quarry claim or any right, privilege or interest which may be acquired under the provisions of this Act to or in respect of Crown lands or unpatented mining rights, and all such applications, documents and instruments may, before patent, be filed or recorded in the said office, but after patent, the provisions of *The Registry Act* and of *The Land Titles Act* shall respectively apply. 8 Edw. VII. c. 21, s. 18.

Rev. Stat. cc. 124, 126.

Vacancy in office of Recorder.

19. Where any part of the Province is not included in a Mining Division, or if there is no Recorder for a Mining Division, all applications shall be made to the Bureau of Mines, and all duties and powers of the Recorder shall be performed and exercised by the Deputy Minister; and all acts, matters and things which in a Mining Division are to be done by or before a Recorder shall be done by or before the Deputy Minister, and all such acts, matters and things which are to be done in the office of the Recorder shall be done at the Bureau of Mines. 8 Edw. VII. c. 21, s. 19.

Minister to furnish Recorder with list of lands patented.

20. Upon the issue of a patent by the Crown of any mining lands or mining rights, the Minister shall give notice thereof to the Recorder of the Mining Division in which the lands

included in the patent are situate, and the Recorder shall keep in his office a list of all such lands. 8 Edw. VII. c. 21, s. 20.

SPECIAL MINING DIVISIONS.

21.—(1) The Lieutenant-Governor in Council may declare any locality to be a Special Mining Division. Special Mining Divisions.

(2) Every Order in Council made under this section shall be published in the *Ontario Gazette* and shall take effect from the date of the first publication thereof. 8 Edw. VII. c. 21, s. 21. Order in Council.

LICENSES TO MINE AND LICENSE HOLDERS.

22.—(1) No person, mining partnership or company not the holder of a miner's license shall prospect for minerals upon Crown Lands or land of which mining rights are in the Crown, or stake out, record or acquire any unpatented mining claim, quarry claim, or area of land for a working permit or for boring permit, or acquire any right or interest therein. License required.

(2) A clerk or employee of a licensee performing clerical, manual or other services of like nature shall not be required to be the holder of a miner's license. 8 Edw. VII. c. 21, s. 22. Clerks or employees not to require license.

23.—(1) Any person over eighteen years of age, any mining partnership and, subject to the provisions of subsection 6, any company incorporated or licensed under the laws of Ontario to transact business or hold lands in Ontario, shall be entitled on payment of the prescribed fee to obtain a miner's license. (Form 1.) Who may receive license.

(2) The license shall be dated on the day of the issue thereof and shall expire at midnight on the 31st day of March then next ensuing. Date and term of license.

(3) The license shall be effectual throughout Ontario but shall not be transferable. Effect of license,—non-transferable.

(4) Licenses to companies shall be issued only by the Minister or by the Deputy Minister. License to companies.

(5) Licenses to individuals and to mining partnerships may be issued by the Minister or the Deputy Minister or by any Recorder. Who may issue licenses.

(6) A license shall not be issued to a company if it is incorporated under the laws of Ontario unless or until it has satisfied the Minister or the Deputy Minister that it is so incorporated, and if it is not so incorporated, unless or until it has filed with the Bureau of Mines a copy of the license authorizing the company to transact business or hold land in Ontario verified by the affidavit, Form 2, of an officer of the company. 8 Edw. VII. c. 21, s. 23. Proof required before license to company.

Numbering
and lettering of
licenses.

24. Every miner's license shall be numbered, and shall also be lettered with a letter of the alphabet prescribed by the Minister to indicate the office from which it was issued. 8 Edw. VII. c. 21, s. 24.

Effect of
license to
partnership
or company.

25. A miner's license held by a mining partnership or a company shall not entitle any partner, shareholder, officer or employee thereof to the rights or privileges of a licensee. 8 Edw. VII. c. 21, s. 25.

Unlicensed
person not
to act for
partnership
or company.

26. A person who is not a licensee shall not prospect for minerals or stake out a mining claim, quarry claim, or area of mining land for the purpose of obtaining a working permit or boring permit on behalf of a mining partnership or a company. 8 Edw. VII. c. 21, s. 26.

Renewal of
license.

27.—(1) A licensee shall be entitled to a renewal of his license, Form 3, on production of his license before the expiration thereof and on payment of the prescribed fee.

Who may issue
renewal.

(2) The license may be renewed by the Minister or the Deputy Minister or by any Recorder.

Date and effect
of renewal.

(3) The renewal shall bear date on the 1st day of April and shall be deemed to have been issued and shall take effect immediately upon the expiration of the license of which it is a renewal, or of the last preceding renewal as the case may be.

Form of.

(4) The renewal shall bear the same number and letter as the original license and after it comes into effect it shall be deemed to be the license of the licensee. 8 Edw. VII. c. 21, s. 27.

Accidental
destruction or
loss of license.

28.—(1) If a miner's license is accidentally destroyed or lost, the holder may, on payment of the prescribed fee, obtain a duplicate thereof from the office out of which the original was issued.

Substituted
license.

(2) Every such duplicate shall be marked "substituted license." 8 Edw. VII. c. 21, s. 28.

Not more than
one license to
be issued.

29.—(1) No person, mining partnership or company shall apply for or hold more than one miner's license.

(2) A contravention of this section shall be an offence against this Act. 8 Edw. VII. c. 21, s. 29.

Production
of license.

30. Every licensee shall upon demand produce and exhibit his license to an Inspector or a Recorder. 8 Edw. VII. c. 21, s. 30.

License to date
from applica-
tion therefor.

31. Where application for a license or a renewal of a license is made during the absence of a Recorder from his office, the applicant may leave with the person in charge of the office his application and such documents as he is required to produce in order to obtain the license or renewal and the prescribed

fee, and in every such case the license or renewal when issued shall be as effective as if obtained at the time of the application, and the license shall bear that date. 8 Edw. VII. c. 21, s. 31.

32. A licensee under the age of twenty-one years shall, in respect of mining claims, mining lands and mining rights and all matters and transactions relating thereto, have the same rights and be subject to the same obligations and liabilities as if he were of full age. 8 Edw. VII. c. 21, s. 32.

Licensee under twenty-one years of age.

33. The Minister, on the recommendation of the Commissioner, may revoke the license of any licensee who is guilty of a wilful contravention of any of the provisions of this Act, and a license shall not thereafter be issued to such licensee without the authority of the Minister. 8 Edw. VII. c. 21, s. 33.

Revocation of license for violation of Act.

PART II.—MINING CLAIMS.—MINERAL IN PLACE.

WHAT LANDS OPEN.

34. Subject to the provisions herein contained, the holder of a miner's license may prospect for minerals and stake out a mining claim on any

Where licensee may prospect for minerals.

(a) Crown lands surveyed or unsurveyed;

(b) Lands, the mines, minerals or mining rights whereof have been reserved by the Crown in the location, sale, patent or lease of such lands;

not at the time

(i) Under staking or record as a mining claim which has not lapsed or been abandoned, cancelled or forfeited;

(ii) Under a subsisting working permit; or

(iii) Withdrawn by any Act, Order-in-Council or other competent authority from prospecting, location or sale, or declared by any such authority to be not open to prospecting, staking out or sale as mining claims. 8 Edw. VII. c. 21, s. 34.

DISCOVERER MAY STAKE OUT A CLAIM.

35. A licensee who discovers valuable mineral in place on any land open to prospecting, or a licensee upon whose behalf valuable mineral in place is discovered by another licensee upon any such land, may stake out or have staked out for him a mining claim thereon, and, subject to the other provisions of this Act, may work the same and transfer his interest therein to another licensee; but where the surface rights in the land have been granted, sold, leased, or located by the Crown compensation must be made as provided in section 104. 8 Edw. VII. c. 21, s. 35.

When claim may be staked.

LANDS NOT OPEN.

Lands of
T. & N. O. Ry.
Commission,
etc.

36. No mining claim shall be staked out or recorded upon any land transferred to or vested in The Temiskaming and Northern Ontario Railway Commission, without the consent of the Commission, nor except with the consent of the Minister upon any land

- (a) Reserved or set apart as a town site by the Crown;
- (b) Laid out into town or village lots on a registered plan by the owner thereof;
- (c) Forming the station grounds, switching grounds, yard or right of way of any railway, electric railway or street railway, or upon any colonization or other road or road allowance. 8 Edw. VII. c. 21, s. 36.

Lands used
or occupied as
gardens, etc.

37.—(1) Notwithstanding that the mines or minerals therein have been reserved to the Crown, no person, mining partnership or company shall prospect for minerals upon that part of any lot used as a garden, orchard, vineyard, nursery, plantation or pleasure ground, or upon which crops which may be damaged by such prospecting are growing, or on that part of any lot upon which is situated any spring, artificial reservoir, dam or waterworks, or any dwelling house, out-house, manufactory, public building, church or cemetery, except with the consent of the owner, lessee or locatee of the surface rights, or by order of the Recorder or the Commissioner, and upon such terms as to him may seem just.

Disputes as to
lands exempt.

(2) If any dispute arises between the intending prospector and the owner, lessee or locatee as to land which is exempt from prospecting under subsection 1, the Recorder or the Commissioner shall determine the extent of the land which is so exempt. 8 Edw. VII. c. 21, s. 37.

Valuable water
powers not in-
cluded in
claim.

38. A water power, lying within the limits of a mining claim, which at low water mark, in its natural condition, is capable of producing 150 horse power or upwards, shall not be deemed to be part of the claim for the uses of the licensee, and a road allowance of one chain in width shall be reserved on both sides of the water together with such additional area of land as in the opinion of the Recorder or the Commissioner may be necessary for the development and utilization of such water power. 8 Edw. VII. c. 21, s. 38.

Withdrawal
from pros-
pecting and
sale.

39.—(1) The Lieutenant-Governor in Council may withdraw any lands or mining rights the property of the Crown from prospecting and staking out and from sale or lease.

Re-opening
after with-
drawal.

(2) The Lieutenant-Governor in Council may re-open for prospecting and staking out and for sale or lease any lands or mining rights so withdrawn, or which have been heretofore withdrawn. 8 Edw. VII. c. 21, s. 39.

40. The Lieutenant-Governor in Council may direct that the mines and minerals in land or mining rights so withdrawn or in any part thereof may be worked by or on behalf of the Crown under and pursuant to regulations to be made by the Minister. 8 Edw. VII. c. 21, s. 40.

Working on behalf of Crown.

41. Land or mining rights so withdrawn, until re-opened by Order in Council, shall remain withdrawn, and shall not be prosecuted, staked out, occupied or worked except by or on behalf of the Crown. 8 Edw. VII. c. 21, s. 41.

Lands withdrawn not to be prospected or worked.

42.—(1) Every officer appointed or acting under the provisions of this Act, and every assistant of such officer who makes a discovery of valuable mineral upon any lands or mining rights, open to prospecting and staking out as a mining claim, shall stake out and record a parcel thereof of the size and form of a mining claim on behalf of the Crown, and no license shall be required for that purpose.

Duty of officers of the Crown discovering mineral.

(2) No proceeding shall be necessary for such staking out except to plant posts and blaze lines as provided in respect to a mining claim, but the officer or assistant shall mark upon the discovery post and No. 1 post the words "staked out for the Crown," and within the time limited by this Act for recording the claim shall notify the Recorder of the staking out, giving the date of staking out and the description of the property.

Method.

(3) The Recorder upon receiving such notice shall enter the parcel of land upon his record book as staked out on behalf of the Crown, and shall mark it upon his map with the letter "C," and after such staking out the parcel shall not be open to staking out or recording. 8 Edw. VII. c. 21, s. 42.

Recording.

43. Land or mining rights staked out on behalf of the Crown, and land or mining rights reserved or withdrawn from prospecting, staking out, or sale as mining claims, may be worked, sold, leased or granted by the Crown or worked under an agreement or arrangement with the Crown in such manner and upon such terms and conditions and for such price as may be provided by Order in Council; and all sales, leases, grants or working agreements heretofore made in respect of any such land or mining rights are hereby ratified and confirmed. 8 Edw. VII. c. 21, s. 43.

Crown may contract for working mining rights under agreement.

FOREST RESERVES.

44. No person, mining partnership or company, not the holder of a miner's license, shall use or occupy any of the lands in a Crown Forest Reserve, or prospect for minerals or conduct mining operations therein, and no licensee shall use or occupy any of the lands in a Crown Forest Reserve or prospect for minerals or conduct mining operations therein, except

Protection of Forest Reserves.

in accordance with regulations made under *The Forest Reserves Act*. 8 Edw. VII. c. 21, s. 44.

Mining lands
not to be sold
on Forest
Reserve.

45. No land shall be sold for mining purposes in a Crown Forest Reserve. 8 Edw. VII. c. 21, s. 45.

Mining leases
on Forest
Reserves.

46.—(1) A lease of lands in a Crown Forest Reserve permitting mining operations therein may be made for a period not exceeding ten years with the right of perpetual renewal for periods of not more than ten years.

(2) Every such lease and every renewal of it shall be subject to such regulations as may from time to time be made by the Lieutenant-Governor in Council. 8 Edw. VII. c. 21, s. 46.

LANDS UNDER TIMBER LICENSE.

Conditions
under which
exploration
may be al-
lowed on
timber berths.

47. Except as herein otherwise provided, the holder of a miners' license may prospect for minerals on any Crown lands under timber license under and subject to the following provisions:

1. Upon the discovery of valuable mineral in place on any Crown lands under timber license the holder of a miners' license may stake out and record a mining claim thereon, and the Recorder within three days after the application for record shall notify the Minister thereof and the Minister shall thereupon notify the timber licensee.

2. The provisions of this Act with reference to mining operations on the mining claim shall be suspended until it has been decided by the Minister whether mining operations shall be permitted to be carried on, and if the Minister decides that mining operations may be carried on, the time for the performance of the working conditions shall begin on the day fixed by the Minister, of which date notice shall be given to the Recorder and the mining licensee.

3. The Minister may impose such restrictions and limitations as in his judgment may be necessary to protect the interests of the Crown and of all persons concerned.

4. The Lieutenant-Governor in Council may make regulations regarding the carrying on of mining operations on Crown Lands under timber license, but the provisions of subsection 3 of section 188 shall apply to such regulations.

5. The rights conferred upon the holder of a miner's license under this section shall be subject to the payment to the timber licensee of the value of his interest in any timber cut or damaged upon such mining claim, and any dispute between the mining licensee and the timber licensee in respect to the quantity or the value thereof or otherwise shall be disposed of by the Minister, whose decision shall be final. 8 Edw. VII. c. 21, s. 47.

PROHIBITING MINING WORK.

48. The Minister, whenever he deems it necessary for the protection of timber or for any other reason may prohibit the carrying on upon Crown lands of mining work or other operations which would otherwise be lawful under this Act until such time and except in accordance with such restrictions and conditions as he may deem proper. 8 Edw. VII. c. 21, s. 48.

Minister may prohibit mining.

SIZE AND FORM OF MINING CLAIMS.

49. A mining claim in unsurveyed territory shall be laid out with boundary lines running north and south and east and west astronomically and the measurements thereof shall be horizontal, and in a township surveyed into lots or quarter sections or subdivisions of a section, a mining claim shall be such part of a lot or quarter section or subdivision of a section as is hereinafter defined, and the boundaries of all mining claims shall extend downwards vertically on all sides. 8 Edw. VII. c. 21, s. 49.

Lines how to be run.

Mining Claims not in a Special Mining Division.

50. Except in a Special Mining Division,

(a) A mining claim in unsurveyed territory shall be a square of 40 acres, being 20 chains (1,320 ft.) on each side.

Size and form of claim.

(b) Where mining locations the property of the Crown in unsurveyed territory have been surveyed in conformity with any Act into blocks of the following dimensions, namely, 20 chains in length by 20 chains in width, 40 chains in length by 20 chains in width, 40 chains square, or 80 chains in length by 40 chains in width, or thereabouts, and the plans and field notes of such locations are of record in the Department, a mining claim staked out thereon shall be 20 chains in length by 20 chains in width, and one claim shall comprise the whole of a location 20 chains square. A location 40 chains in length by 20 chains in width may be divided into two mining claims by a line drawn through the centre thereof parallel to one of the shorter boundaries. In the case of a location 40 chains square a claim shall consist of one or other of the following subdivisions: the northeast quarter, the northwest quarter, the southeast quarter, or the southwest quarter. In a location 80 chains in length by 40 chains in width where the length of the location is north and south, a claim shall consist of the northeast quarter of the north half, the northwest quarter of the north half, the southeast quarter of the north half, the southwest quarter of the north half, the southeast quarter of the south half, the southwest quarter of the south half, the northeast quarter of the south half, or the northwest quarter of the south half.

Mining locations heretofore surveyed in unsurveyed territory.

Size of claims.

ter of the north half or any like subdivision of the south half; and where the length of a location is east and west a claim shall consist of the northeast quarter of the east half, the northwest quarter of the east half, the southeast quarter of the east half, or the southwest quarter of the east half, or any like subdivision of the west half.

In townships surveyed into sections of 640 acres.

- (c) In a township surveyed into sections of 640 acres subdivided into quarter sections, or subdivisions containing 160 acres or thereabouts, a mining claim shall consist of the northeast quarter, the northwest quarter, the southeast quarter or the southwest quarter of a quarter-section or subdivision, and shall contain 40 acres or thereabouts.

Townships surveyed into lots of 320 acres.

- (d) In a township surveyed into lots of 320 acres, a mining claim shall consist of the northwest quarter of the north half, the northeast quarter of the north half, the southwest quarter of the north half, the southeast quarter of the north half, or any like subdivision of the south half, and shall contain 40 acres or thereabouts.

Townships surveyed into lots of 200 acres.

- (e) In a township surveyed into lots of 200 acres a mining claim shall consist of the northeast quarter, the southwest quarter the northwest quarter or the southeast quarter of the lot, and shall contain 50 acres or thereabouts.

Townships surveyed into lots of 150 acres.

- (f) In a township surveyed into lots of 150 acres, a mining claim shall consist of the northeast quarter, the southeast quarter, the northwest quarter, or the southwest quarter of the lot, and shall contain $37\frac{1}{2}$ acres or thereabouts.

Townships surveyed into lots of 100 acres.

- (g) In a township surveyed into lots of 100 acres, a mining claim shall consist of the north half, the south half, the east half, or the west half of the lot, and shall contain 50 acres, or thereabouts. 8 Edw. VII. c. 21, s. 50.

Claims in Special Mining Division.

51. In a Special Mining Division

In unsurveyed territory.

- (a) A mining claim in unsurveyed territory shall be a rectangle of 20 acres, having a length from north to south of 20 chains (1,320 ft.) and a width from east to west of 10 chains (660 ft.)

Special mining claims on mining locations heretofore surveyed in unsurveyed territory

- (b) Where mining locations the property of the Crown in unsurveyed territory have heretofore been surveyed in conformity with the provisions of any Act into blocks of the following dimensions, namely, 20 chains in length by 20 chains in width,

40 chains in length by 20 chains in width, 40 chains square, or 80 chains in length by 40 chains in width, or thereabouts, and the plans and field notes of such locations are of record in the Department, a mining claim staked out thereon shall consist of the east half or the west half of a location 20 chains square, or the northeast quarter, the southeast quarter, the northwest quarter, or the southwest quarter of a location 40 chains in length by 20 chains in width; or the west half or the east half of any of the following subdivisions of a location 40 chains square, namely, the northeast quarter, the northwest quarter, the southeast quarter, or the southwest quarter; or the northeast quarter of the northeast quarter, the northwest quarter of the northeast quarter, the southeast quarter of the northeast quarter, or the southwest quarter of the northeast quarter, or any like subdivision of the southeast quarter, the southwest quarter, or the northwest quarter of a location 80 chains in length by 40 chains in width, or where the length of such location is east and west, of the east half or the west half of the northeast quarter of the east half, the east half or the west half of the southeast quarter of the east half, the east half, or the west half of the northwest quarter of the east half, or the east half or the west half of the southwest quarter of the east half or of a corresponding subdivision of the west half of the location, and every such mining claim shall contain 20 acres or thereabouts.

- (c) In a township surveyed into sections of 640 acres, where the sections have been subdivided into quarter sections or subdivisions, a mining claim shall consist of either the west half or the east half of the northeast quarter, the southeast quarter, the northwest quarter or the southwest quarter of a quarter section or subdivision, and shall contain 20 acres or thereabouts. In township surveyed into sections of 64 acres.
- (d) In a township surveyed into lots of 320 acres, a mining claim shall consist of the northeast quarter of the northeast quarter, the northwest quarter of the northeast quarter, the southeast quarter of the northeast quarter, or the southwest quarter of the northeast quarter, or any like subdivision of the southeast quarter, the southwest quarter, or the northwest quarter of the lot, and shall contain 20 acres or thereabouts. In townships surveyed into lots of 320 acres.
- (e) In a township surveyed into lots of 200 acres, a mining claim where the side lines of the lots run northerly and southerly shall consist of the north- In townships surveyed into lots of 200 acres.

east quarter of the north half, the southeast quarter of the north half, the northwest quarter of the north half, the southwest quarter of the north half, or any like subdivision of the south half; and where the side lines of the lots run easterly and westerly, the mining claim shall consist of the northeast quarter of the east half, the northwest quarter of the east half, the southeast quarter of the east half, the southwest quarter of the east half, or any like subdivision of the west half, and every such mining claim shall contain 25 acres or thereabouts.

In townships surveyed into lots of 150 acres.

- (f) In a township surveyed into lots of 150 acres a mining claim shall consist of the north half or the south half of the northeast quarter, the northwest quarter, the southeast quarter or the southwest quarter of the lot, and shall contain $18\frac{3}{4}$ acres or thereabouts.

In townships surveyed into lots of 100 acres.

- (g) In a township surveyed into lots of 100 acres, a mining claim shall consist of the northeast quarter, the southeast quarter, the northwest quarter, or the southwest quarter of a lot, and shall contain 25 acres or thereabouts. 8 Edw. VII. c. 21, s. 51.

Irregular Areas, etc.

Marking boundaries of irregular areas in unsurveyed territory.

52.—(1) In unsurveyed territory an irregular portion of land lying between land not open to be staked out, or bordering on water, may be staked out with boundaries coterminous thereto, but the claim shall be made to conform as nearly as practicable to the prescribed form and area and shall not exceed the prescribed area.

In surveyed townships.

(2) In a surveyed township where, by reason of land covered with water being excluded from the area of a lot, quarter-section or subdivision of a section, or by reason of the lot, quarter section or subdivision being irregular in form, or from any other cause, it is impossible to stake out a mining claim of the prescribed area in accordance with the foregoing provisions of this Act, the mining claim where practicable shall be of the prescribed form and area, and shall have such, if any, of its boundaries as can be so made coincident with boundary lines of the lot, quarter-section or subdivision of a section, and shall have as many as possible of its boundaries which are not so coincident parallel to boundaries of the lot, quarter-section or subdivision which are straight lines, and where necessary to procure the prescribed area the mining claim may extend into any part of the lot or quarter-section or subdivision of a section, but not into any other lot or quarter-section or subdivision of a section, and land lying between land not open to be staked out or between such land and a boundary or boundaries of the lot, quarter-section or subdivision of a sec-

tion, may be staked out with boundaries coterminous thereto, but the claim shall be made to conform as nearly as practicable to the prescribed form and area and shall not exceed the prescribed area. 8 Edw. VII. c. 21, s. 52.

(3) In unsurveyed territory land covered with water may be included in a claim in the same way as land not covered with water; and in a surveyed township, land covered with water which would, if not covered with water, have been comprised in the area of the lot, quarter section or subdivision of a section, or have constituted a lot, quarter section, or subdivision of a section, may be included in a claim as if it were in fact part of such lot, quarter section, or subdivision of a section; but wherever a claim includes land covered with water there may be reserved to the Crown, the surface rights in a strip of land along the shore 66 feet in perpendicular width from the water's edge and such other rights of access and passage to, from and over the water as to the Minister may seem desirable, and in the case of navigable water a lease or license only to extract the ore or mineral, and not a patent, shall be granted. 2 Geo. V. c. 8, s. 4.

Claims including lands covered with water.

Number of Claims which may be Staked out.

53. Not more than three mining claims may be staked out or applied for in the name of a licensee in any one mining division or in territory not comprised in a mining division during a license year. 8 Edw. VII. c. 21, s. 53; 2 Geo. V. c. 8, s. 5.

Number of claims of licensee in one year.

STAKING OUT CLAIMS.

54.—(1) A mining claim shall be staked out by

Staking out and planting.

(a) Planting or erecting upon an outcropping or showing of mineral in place at the point of discovery a discovery post upon which shall be written or placed the name of the licensee making the discovery, the letter and number of his license, and the date of his discovery, and if the discovery is made on behalf of another licensee for and in whose name the claim is to be staked out and recorded, also the name of such other licensee, and the letter and number of his license;

Discovery posts.

(b) Planting or erecting a post at each of the four corners of the claim, marking that at the northeast corner "No. 1," that at the southeast corner "No. 2," that at the southwest corner "No. 3," and that at the northwest corner "No. 4," so that the number shall be on the side of the post toward the post next following it in the order named;

Corner posts.

(c) Writing or placing on No. 1 post all the particulars required to be upon the discovery post, and also

Particulars on No. 1 post.

plainly marking* thereon the distance and direction therefrom of the discovery post, and if the claim is situated in a township surveyed into lots, quarter sections or subdivisions of a section, the part thereof comprised in the claim, mentioning the lot and concession or the section by number;

Marking name
of licensee, etc.

- (d) Writing or placing on No. 2, No. 3 and No. 4 posts the name of the licensee making the discovery, and if the discovery is made on behalf of another licensee for and in whose name the claim is being staked out, also the name of such other licensee; and

Marking
boundaries
and blazing or
picketing.

- (e) Plainly blazing the trees on two sides only where there are standing trees, and cutting the underbrush along the boundary lines of the claim and plainly blazing a line from No. 1 post to the discovery post, or where there are not standing trees, clearly indicating the outlines of the claim, and marking a line from No. 1 post to the discovery post by planting durable pickets, not less than five feet in height thereon at intervals of not more than two chains (132 feet) or by erecting at such intervals monuments of earth or rock not less than two feet in diameter at the base, and at least two feet high, so that the lines may be distinctly seen.

Witness post.

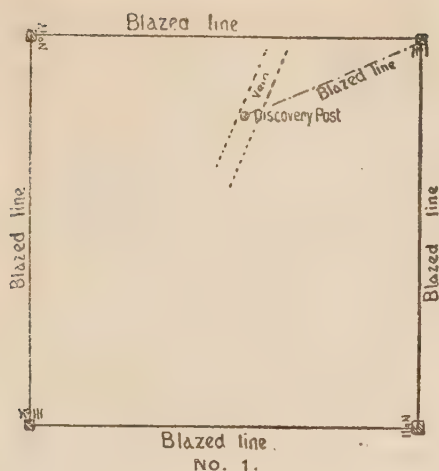
- (2) Where at a corner of the claim the nature or conformation of the ground renders the planting or erecting of a post impracticable, such corner may be indicated by planting or erecting at the nearest practicable point a witness post which shall bear the same marking as that prescribed for the corner post at that corner together with the letters "W.P." and an indication of the direction and distance of the site of the true corner from the witness post.

Mode of
planting,
squaring, etc.,
of posts.

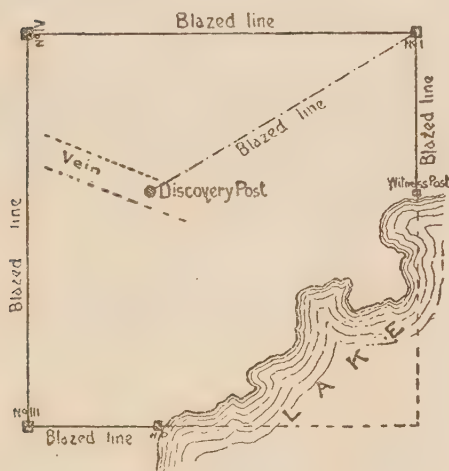
- (3) Every post shall stand not less than four feet above the ground, and shall be squared or faced on four sides for at least one foot from the top, and each side shall measure at least four inches across where squared or faced, but a standing stump or tree may be used as a post if cut off and squared and faced to such height and size, and when the survey is made the centre of the tree or stump where it enters the ground shall be taken as the point to or from which the measurement shall be made.

Form of claim.

- (4) The following diagrams are intended to illustrate the method of staking out a claim as mentioned in subsections 1 and 2.



No. 1.



No. 2.

8 Edw. VII. c. 21, s. 54.

55. After a discovery of valuable mineral in place, the licensee, if he desires to stake out a claim thereon, shall at once plant or erect his discovery post and proceed as quickly as is reasonably possible to complete the staking out of the claim, and if he is in fact the first licensee to make a discovery of valuable mineral in place and plant a discovery post thereon no other licensee shall be entitled to stake out or interfere with the property while he is so completing the staking out, but if he fails to proceed with the staking out with such diligence and speed, he shall be liable to lose his rights in case another licensee makes a discovery of valuable mineral in place upon the property and completes the staking out before him. 8 Edw. VII. c. 21, s. 55.

Prospecting
pickets.

56.—(1) Until a discovery post is planted or erected all licensees shall have equal rights upon land open to prospecting, except that where a licensee has found what he believes to be a vein or deposit of mineral or to be an indication thereof, he may plant or erect not more than 150 feet apart two pickets, at least four feet in height, to be known as prospecting pickets, each marked with the letters "P.P." and his name and license number and letter, and may dig a trench not less than six feet long and six inches deep from each of such pickets along the line running towards the other picket, or where that is impracticable may erect a monument of rock or earth not less than two feet wide at the base and at least two feet high, extending six feet from each picket towards the other picket, and may also blaze the standing trees, if any, along the line between the pickets, and after he has done so, so long as he is diligently and continuously prospecting or following up indications on the block of land extending twenty-five feet on each side of a straight line between the pickets he shall be entitled to the exclusive right to prospect and to make a discovery thereon.

Not to prevent
other licensee
from staking
out claim.

(2) Nothing in subsection 1 shall prevent any other licensee from prospecting anywhere outside the limits of such block of land, and the first licensee to discover valuable mineral in place and stake out a mining claim thereon shall, subject to the other provisions of this Act, be entitled to the claim, and if the claim includes such block of land the rights of such picketing licensee shall cease.

Licensee not to
have more
than one block
picketed.

(3) A licensee shall not have more than one block of land picketed at one time, and if he has at any time more than one all his picketings shall be void. 8 Edw. VII. c. 21, s. 56.

Forfeiture of
right to further
staking.

57.—(1) A licensee or other person who for any purpose does any staking out or plants, erects or places any stake, post, or marking upon any land open to prospecting except as authorized by this Act, or causes or procures the same to be done, or who stakes out or partially stakes out any such lands, or causes or procures the same to be done, and fails to record the staking out with the Recorder within the prescribed time, shall not thereafter be entitled to again stake out such lands or any part thereof, or to record a mining claim thereon, unless he notifies the Recorder in writing of such staking out, partial staking out, or planting, placing or marking and of his abandonment thereof and satisfies the Recorder by affidavit that he acted in good faith and for no improper purpose and pays to the Recorder a fee of \$20 and procures from him a certificate stating that the Recorder is satisfied that he so acted.

Entry of
forfeiture.

(2) The Recorder shall enter every such certificate in his books with the date of its issue.

58. Substantial compliance as nearly as circumstances will reasonably permit with the requirements of this Act as to the staking out of mining claims shall be sufficient. 8 Edw. VII. c. 21, s. 58. Substantial compliance with Act sufficient.

APPLICATIONS TO RECORD.

59.—(1) A licensee who has staked out a mining claim or upon whose behalf a mining claim has been staked out shall, within fifteen days thereafter or within the further time allowed by subsection 4, furnish to the Recorder an outline sketch or plan of the mining claim, showing the discovery post and corner posts and the witness posts, if any, and their distance from each other in feet, together with an application, Form 4, setting forth the name of the licensee by whom the valuable mineral in place was discovered and of the licensee on whose behalf the application is made and the letters and numbers of their licenses, the name, if any, of the claim, and in the case of unsurveyed territory its locality indicated by some general description and such other information as will enable the Recorder to lay down the claim on his office map, or in the case of a surveyed township, designating the lot, quarter section or subdivision of a section, and the portion thereof comprised in the claim, the length of the outlines, and, if for any reason they are not regular, the nature of such reason, the situation of the discovery post as indicated by the distance and direction from No. 1 post, the day and hour when the discovery of valuable mineral in place was made, when the claim was staked out and the date of the application, and with the application shall be paid the prescribed fee. Plan and application to be furnished to Recorder.

(2) If a licensee claims to be entitled to a free grant of a mining claim under section 108, he shall, in addition to the application to record the claim, make application, Form 5, for the free grant. Application for free grant.

(3) The application and sketch or plan shall be accompanied by an affidavit, Form 6, made by the discovering licensee showing a discovery of valuable mineral in place upon the claim, with particulars of the kind of ore or mineral discovered, and, if possible, the kind of rock enclosing it, the date of the discovery and of the staking out, that the distances given in the application and sketch or plan are as accurate as they could reasonably be ascertained, and that all the other statements and particulars set forth and shown in the application and sketch or plan are true and correct, that at the time of staking out there was nothing upon the lands to indicate that they were not open to be staked out as a mining claim, that the deponent verily believes they were so open and that the staking out is valid and should be recorded, and that there are upon the lands or the lot or part lot or section of which they form a part no buildings, clearing or improvements for farming or other purposes except as set forth in the affidavit; and an applicant for a free grant shall also file an affidavit, Form 7, showing his right thereto. Affidavit to accompany map, etc.

Additional
time allowed
in consider-
ation of
distance.

(4) Where the claim is situate more than ten miles in a straight line from the office of the Recorder for each additional ten miles or fraction thereof an additional day shall be allowed for recording. 8 Edw. VII. c. 21, s. 59.

Endorsement
of claims
recorded on
license.

60. A licensee by or on whose behalf an application is made to record a mining claim shall at the time of the application produce the license of the licensee by whom the staking out was done and of the licensee by or on whose behalf the application is made to the Recorder, and the Recorder shall endorse and sign upon the back of the last mentioned license a note in writing of the record of the claim, and no such record shall be complete or effective until such endorsement is made unless upon application to or in any case coming before the Commissioner he deems it just that compliance with the requirements of this section should be excused. 8 Edw. VII. c. 21, s. 60.

Licensee
recording in
another
division by
error.

61. If by error a licensee records a mining claim in a division other than that in which the claim is situate the error shall not affect his title to the claim, but he shall within fifteen days from the discovery of the error record the claim in the division in which it is situate, and the new record shall bear the date of the former record, and a note shall be made thereon of the error and of the date of rectification. 8 Edw. VII. c. 21, s. 61.

What to
be recorded.

62.—(1) The Recorder shall forthwith enter in the proper book in his office the particulars of every application to record a mining claim which he deems to be in accordance with the provisions of this Act, unless a prior application is already recorded and subsisting for the same, or for any substantial portion of the same lands or mining rights, and he shall file the application, sketch or plan and affidavit with the records of his office; and every application proper to be recorded shall be deemed to be recorded when it is received in the Recorder's office, if all requirements for recording have been complied with, notwithstanding that the application may not have been immediately entered in the record book.

Procedure
when refused.

(2) If an application is presented which the Recorder deems to be not in accordance with this Act, or which is for lands or mining rights which or any substantial portion of which are included in a subsisting recorded claim, he shall not record the application, but shall, if desired by the applicant, upon receiving the prescribed fee, receive and file the application, and any question involved may be adjudicated as provided in this Act; but such filing shall not be deemed a dispute of the recorded claim, nor shall it be noted or dealt with as such, unless a dispute verified by affidavit is filed with the Recorder by the applicant or by another licensee on his behalf as in the next following section provided. 8 Edw. VII. c. 21, s. 62; 2 Geo. V. c. 8, s. 6 (1, 2).

Adjudication.

(3) As soon as reasonably possible after the recording of the mining claim, and not later than the expiration of the time for performing the first instalment of work, the holder of the claim shall affix or cause to be affixed securely, to his No. 1 post, a metal tag plainly marked or impressed with the recorded number and letter or letters, if any, of the claim, and in default the claim may be cancelled by the Recorder or Commissioner on the application of any one misled by the lack of such tag. The Recorder on application shall supply such numbered tag free of charge. 2 Geo. V. c. 8, s. 6 (3).

Tagging No.
1 post after
recording.

DISPUTING APPLICATIONS.

63.—(1) A dispute, Form 8, verified by affidavit, Form 9, may be filed with the Recorder by a licensee alleging that any recorded claim is illegal or invalid in whole or in part, and if the disputant or the licensee in whose behalf he is acting claims to be entitled to be recorded for or to be entitled to any right or interest in the lands or mining rights, or in any part thereof comprised in the disputed claim the dispute shall so state, giving particulars; and the Recorder shall, upon payment of the prescribed fee, receive and file such dispute, and shall enter a note thereof upon the record of the disputed claim.

Dispute of
recorded
claim.

(2) A copy of the dispute and affidavit shall be left by the disputant with the Recorder who shall not later than the next day after the filing of the dispute transmit such copy by registered post to the recorded holder of the mining claim affected thereby. If the copy is not left, the Recorder may refuse to file or note the dispute or may collect from the disputant ten cents per folio for making the copy.

Copy to be
sent to
recorded
holder.

(3) A dispute shall not be received unless it contains or has endorsed thereon an address for service at some place not more than five miles distant from the Recorder's office, and the provisions of subsections 4 and 5 of section 133 shall apply in respect to service upon the disputant. 8 Edw. VII. c. 21, s. 63 (1)-(3).

Address for
service of
disputant.

(4) A dispute shall not be received or entered against any claim after a certificate of record thereof has been granted, nor except by leave of the Commissioner after the validity of the claim has been adjudicated upon by the Recorder or by the Commissioner, or after it has been on record for sixty days and has already had a dispute entered against it; but this amendment is not retroactive and shall not apply to any case where such validity has heretofore been adjudicated upon by the Recorder or by the Commissioner. 8 Edw. VII. c. 21, s. 63 (4); 10 Edw. VII. c. 26, s. 35.

Not to be
received after
certificate
issued.

CERTIFICATE OF RECORD.

64. Where a mining claim not within a Complete Inspection Area has been recorded for sixty days and the alleged dis-

Granting cer-
tificate of
record.

covery has not been adversely reported upon by the inspecting officer, or where a mining claim within a complete inspection area has been recorded for sixty days, and the discovery upon which it is based has been inspected and finally allowed, upon application of the holder of the claim, and if there is no dispute standing against the claim and the surface rights compensation, if any, has been paid or secured, the Recorder, unless by reason of an order, pending proceeding or other special matter or thing it would be improper to do so, shall give to such holder a certificate of record, Form 10, or if a portion of the claim is unaffected by any of the matters aforesaid he may, if he deems proper, give a certificate of record as to such portion. 8 Edw. VII. c. 21, s. 64.

Effect of issue and delivery of certificate of issue.

65. The certificate of record, in the absence of mistake or fraud, shall be final and conclusive evidence of the performance of all the requirements of this Act, except working conditions, in respect to the mining claim up to the date of the certificate; and thereafter the mining claim shall not in the absence of mistake or fraud be liable to impeachment or forfeiture except as expressly provided by this Act. 8 Edw. VII. c. 21, s. 65.

Cancelling certificate of record issued by mistake, etc.

66. Where the certificate of record has been issued in mistake or has been obtained by fraud, the Commissioner shall have power to revoke and cancel it on the application of the Crown or an officer of the Bureau of Mines, or of any person interested. 8 Edw. VII. c. 21, s. 66.

RIGHTS OF LICENSEE.

Discovery of valuable mineral necessary.

67. Subject to the provisions of section 65, a licensee shall not acquire any right to or interest in a mining claim unless a discovery of valuable mineral in place has been made thereon by him or by another licensee on his behalf. 8 Edw. VII. c. 21, s. 67.

Rights in claim.

68. The staking out or the filing of an application for, or the recording of a mining claim, or all or any of such acts, shall not confer upon a licensee any right, title, interest or claim in or to the mining claim, other than the right to proceed, as in this Act provided to obtain a certificate of record and a patent from the Crown; and prior to the issue of a certificate of record the licensee shall be merely a licensee of the Crown, and after the issue of the certificate and until he obtains a patent he shall be a tenant at will of the Crown in respect of the mining claim. 8 Edw. VII. c. 21, s. 68.

ADDRESS FOR SERVICE.

Address for service to be on application for claim, etc.

69.—(1) Every application for a mining claim or a working permit and every other application and every transfer or assignment of a mining claim or of any right or interest

acquired under the provisions of this Act shall contain, or have endorsed thereon, the place of residence and post office address of the applicant, transferee or assignee, and also, when he is not a resident in Ontario, the name, residence and post office address of some person resident in Ontario upon whom service may be made.

(2) No such application, transfer or assignment shall be filed or recorded unless it conforms with the provisions of the next preceding subsection. Irregular documents not to be filed.

(3) Another person resident in Ontario may be substituted as the person upon whom service may be made by filing in the office in which any such application, transfer or assignment is filed or recorded, a memorandum setting forth the name, residence and post office address of such other person, and such substitution may be made from time to time as occasion may require. Substituting new agent for service.

(4) Service upon the person named as the person upon whom service may be made, unless another person has been substituted for him under the provisions of subsection 3, and in case of such substitution upon the person substituted shall have the same effect as service upon the person whom he represents. Service upon agent to be sufficient.

(5) The provisions of the next preceding subsection shall apply to every notice, demand or proceeding in any way relating to a mining claim or to mining rights or to any other right or interest which may be acquired under the provisions of this Act. 8 Edw. VII. c. 21, s. 69. General application of section.

TRUSTS, AGREEMENTS AND TRANSFERS.

70.—(1) Notice of a trust, express, implied or constructive, relating to any unpatented mining claim shall not be entered on the record or be received by a Recorder. Claim "in trust."

(2) Describing the holder of the mining claim as a trustee, whether the beneficiary or object of the trust is mentioned or not, shall not impose upon any person dealing with such holder, the duty of making any enquiry as to his power to deal therewith, but the holder may deal with the claim as if such description had not been inserted. Describing licensee as trustee, etc., effect of.

(3) Nothing in this section shall relieve the holder of the mining claim who is in fact a trustee thereof or of any part or share thereof or interest therein, from liability as between himself and any person, mining partnership or company for whom he is a trustee, but such liability shall continue as if this section had not been enacted, nor shall any provision in this Act relieve the holder from any personal liability or obligation. 8 Edw. VII. c. 21, s. 70. Saving of rights of others.

71.—(1) No person shall be entitled to enforce any claim, right or interest, contracted for or acquired before the stake signed. Necessity for writing signed.

In cases
before
staking out.

ing out, to or in or under any staking out or recording of a mining claim or of any mining lands or mining rights done in the name of another person unless the fact that such first-mentioned person is so entitled is made to appear by a writing signed by the holder of the claim or by the licensee by whom or in whose name the staking out or recording was done or the evidence of such first-mentioned person is corroborated by some other material evidence, and where a right or interest is so made to appear the provisions of the Statute of Frauds shall not apply.

In cases
after
staking out.

(2) No person shall be entitled to enforce any contract, made after the staking out, for sale or transfer of a mining claim or any mining lands or mining rights, or any interest in or concerning the same, unless the agreement or some note or memorandum thereof is in writing signed by the person against whom it is sought to enforce the contract or by his agent thereunto by him lawfully authorized. 8 Edw. VII. c. 21, s. 71.

Transfer, form
of.

72. A transfer of an unpatented mining claim or of any interest therein may be in Form 11 and shall be signed by the transferor or by his agent authorized by instrument in writing. 8 Edw. VII. c. 21, s. 72.

RECORDING DOCUMENTS.

Prerequisites
for recording
instruments.

73. Except as in this Act otherwise expressly provided, no transfer or assignment of or agreement or other instrument affecting a mining claim or any recorded right or interest acquired under the provisions of this Act, shall be entered on the record or received by a Recorder unless the same purports to be signed by the recorded holder of the claim or right or interest affected or by his agent authorized by recorded instrument in writing, nor shall any such instrument be recorded without an affidavit, Form 12, attached to or endorsed thereon, made by a subscribing witness to the instrument. 8 Edw. VII. c. 21, s. 73.

Priority.

74. After a mining claim or any other right or interest acquired under the provisions of this Act has been recorded every instrument other than a will affecting the claim or any interest therein shall be void as against a subsequent purchaser or transferee for valuable consideration without actual notice unless such instrument is recorded before the recording of the instrument under which the subsequent purchaser or transferee claims. 8 Edw. VII. c. 21, s. 74.

Recording
to be
notice.

75. The recording of an instrument under this Act shall constitute notice of the instrument to all persons claiming any interest in the claim subsequent to such recording, notwithstanding any defect in the proof for recording, but nevertheless it shall be the duty of the Recorder not to record

an instrument except upon the proof required by this Act. 8 Edw. VII. c. 21, s. 75.

76. Priority of recording shall prevail unless before the prior recording there has been actual notice of the prior instrument by the party claiming under the prior recording. 8 Edw. VII. c. 21, s. 76. Where actual notice to prevail.

77.—(1) The Recorder shall enter upon the record of any unpatented mining claim or other recorded right or interest a note of any order or decision made by him affecting the same, giving its date and effect and the date of the entry; and he shall upon receiving with the prescribed fee, an order or decision of the Commissioner, or an order, judgment or certificate in an appeal from him, or a certified or sworn copy thereof, file the same and enter a note thereof upon the record of the claim or right or interest affected thereby. Recording orders and judgments.

(2) In a proceeding calling in question any interest in an unpatented mining claim or other recorded right or interest the Commissioner or Recorder may issue a certificate, Form 13, and upon receipt thereof and payment of the prescribed fee the Recorder shall file and note it as herein above directed. Recording certificate of *lis pendens*.

(3) The filing of a certificate shall be actual notice to all persons of the proceeding. Filing certificate to be notice.

(4) The certificate, and the filing and noting thereof, shall be of no effect for any purpose whatever after the expiration of ten days from the date of filing unless within that time an order continuing the same is obtained from the Commissioner or the Recorder, and any person interested may at any time apply to the Commissioner for an order vacating the certificate. 8 Edw. VII. c. 21, s. 77. Duration of certificate of *lis pendens*.

(5) A copy of a writ of execution certified by the sheriff of the county or district to be a true copy of a writ in his hands may be filed with the Recorder, and the Recorder, upon receiving the prescribed fee and being given the number or description of the claim, shall enter a note of such execution upon the record of each claim of which the execution debtor is the recorded holder or in which he has a recorded interest, and from and after, but not before such entry, the execution shall bind all the right or interest of the execution debtor in the claim, and after such entry the sheriff shall have power to sell and realize upon such right or interest in the same way as goods and chattels may be sold and realized upon under execution, and a transfer from the sheriff to the purchaser may, upon the latter becoming, if he is not before, a licensee, be recorded in like manner and with the same effect as a transfer from the execution debtor. Executions against claims, entering note of.

(6) Such certified copy of the writ of execution may be obtained from the sheriff on payment of a fee of \$1, which Certified copy, fee therefor.

fee, together with the fee paid for recording the same, shall be added to the execution debt.

Renewal of
execution.

(7) After entry of such execution upon the record of the claim the sheriff or the execution creditor may do anything which the execution debtor could do to keep the claim or interest in or restore it to good standing, and shall be entitled to add the necessary expense thereof to the execution debt.

Discharge of
execution.

(8) Such execution may be discharged by recording a certificate from the sheriff that it has been satisfied, or by recording a release from the execution creditor, or by obtaining and filing an order of the Commissioner directing its removal. 2 Geo. V. c. 8, s. 7.

WORKING CONDITIONS.

Working con-
ditions on min-
ing claims.

78.—(1) The recorded holder of a mining claim shall perform thereon work which shall consist of stripping or opening up of mines, sinking shafts or other actual mining operations as follows:

Amount.

(a) During the three months immediately following the recording, to the extent of thirty days of not less than 8 hours per day;

(b) During each of the first and second years following the expiration of such three months, to the extent of 60 days of not less than 8 hours per day;

(c) During the third year following the expiration of such three months, to the extent of not less than 90 days of 8 hours per day.

Work done
within
earlier period
and allowance
for excess.

(2) The work may be completed in a less period of time than herein specified. If more work is performed by or on behalf of the recorded holder than is herein required during the first three months or in any subsequent year, the excess upon proof of the same having been performed shall be credited by the Recorder upon the work required to be done during any subsequent year. 8 Edw. VII. c. 21, s. 78 (1)-(2).

Drilling

(3) Boring by diamond or other core drill shall count as work at the rate of two days' work for every foot of boring in solid formation. 2 Geo. V. c. 8, s. 8.

Report of
holder upon
work.

(4) The recorded holder of a mining claim shall, not later than 10 days after each of the periods specified make a report, Form 14, as to the work done by him during such period, verified by affidavit, Form 15, but a report shall not be required for any period in which in consequence of the work having been previously done and reported no work has been done. The report shall show in detail the names and residences of the men who performed the work and the dates upon which each man worked in its performance. 8 Edw. VII. c. 21, s. 78 (3); 10 Edw. VII. c. 26, s. 45 (1).

(5) The Recorder if satisfied that the prescribed work has been duly performed may grant a certificate, Form 16, but he may first if he deems proper inspect or order the inspection of the work, or otherwise investigate the question of its sufficiency and such certificate, in the absence of fraud or mistake, shall be final and conclusive evidence of the due performance of the work therein certified, but where it has been issued in mistake or obtained by fraud the Commissioner shall have power to revoke and cancel it upon the application of the Crown or an officer of the Bureau of Mines or any person interested.

Certificate of performance.

(6) The decision of the Commissioner as to the due performance of work shall be final. 8 Edw. VII. c. 21, s. 78 (4); 10 Edw. VII. c. 26, s. 45 (3).

Decision of Commissioner final.

(7) A licensee who has given notice, Form 17, to the Recorder of his intention to perform all the work required to be performed in respect of not more than three contiguous mining claims upon one or two of them, may perform such work upon the claim or claims so specified and the report and affidavit as to work may be made accordingly.

Performance of work on contiguous claims.

(8) The construction of houses or roads or other like improvements shall not constitute "actual mining operations" within the meaning of this section. 8 Edw. VII. c. 21, s. 78 (5)-(6).

Certain work not regarded.

Computation of Time—Extensions.

79. In computing the time within which work upon a mining claim is required to be performed, the following periods of time shall be excluded:—

Periods excluded in computing time for performance of working conditions.

- (a) All time which by an Order in Council or regulation is excluded;
- (b) In a Forest Reserve the time elapsing between the delivery by the holder of a mining claim to the Bureau of Mines of an application to work upon the same and the granting of such permission;
- (c) In the case of lands under timber license the time during which working conditions are suspended under section 47;
- (d) The time during which mining operations are prohibited by the Minister under section 48. 8 Edw. VII. c. 21, s. 79.
- (e) For the first instalment of work the time between the 16th of November and the 15th of April, both days inclusive, but this shall not have the effect of extending the time for performance of any subsequent instalment of work, and shall not alter the meaning of the word "expiration" in subsection 1 of section 78. 2 Geo. V. c. 8, s. 9.

Extension of
time for per-
formance.

80.—(1) If by reason of pending proceedings or of the death or incapacity from illness of the holder of a mining claim the work is not performed within the prescribed time, the Recorder may from time to time extend the time for the performance of such work for such period as he may deem reasonable and he shall forthwith enter a note of every such extension on the record of the claim.

Work done
during
extension.

(2) Work performed within any such extended period shall be deemed to have been duly performed under section 78. 8 Edw. VII. c. 21, s. 80.

Proportionate
contribution by
co-owners.

81.—(1) Where two or more persons are the holders of an unpatented mining claim, each of them shall contribute proportionately to his interest, or as they may otherwise agree between themselves, to the work required to be done thereon. In case of default by any holder the Commissioner upon the application of any other holder and upon notice to and after hearing all persons interested or such of them as appear, may make an order vesting the interest of the defaulter in the other co-owners upon such terms and conditions and in such proportions as he may deem just.

Application
of subs. 1.

(2) Subsection 1 shall apply to all mining claims staked out or applied for on or after the 14th day of May, 1906, or before that day under regulations made under the authority of *The Mines Act*, being Chapter 36 of the Revised Statutes of Ontario, 1897. 8 Edw. VII. c. 21, s. 81.

ABANDONMENT.

Right of
licensee to
abandon.

82.—(1) A licensee may, at any time, abandon a mining claim by giving notice in writing, Form 18, to the Recorder of his intention so to do.

Entry of note of
abandonment

(2) The Recorder shall enter a note of such abandonment upon the record of the claim with the date of the receipt of the notice and shall forthwith post up in his office a notice of the abandonment, marked with the date of the posting up thereof, and thereupon all interest of the licensee in such claim shall cease and determine, and the claim shall, on and after, but not before the eleventh day after such posting up, inclusive of the day of posting up, be open for prospecting and staking out. 8 Edw. VII. c. 21, s. 82; 2 Geo. V. c. 8, s. 10.

Effect of
non-compli-
ance with Act
or direction of
Recorder as
abandon-
ment.

83. Non-compliance by the licensee with any requirement of this Act as to the time or manner of the staking out and recording of a mining claim or with a direction of the Recorder in regard thereto, within the time limited therefor, shall be deemed to be an abandonment, and the claim shall, without any declaration entry or act on the part of the Crown or by any officer, unless otherwise ordered by the Commis-

sioner, be forthwith open to prospecting and staking out.
8 Edw. VII. c. 21, s. 83; 9 Edw. VII. c. 26, s. 31 (1).

FORFEITURE.

84.—(1) Except as provided by section 85, all the interest of the holder of a mining claim before the patent thereof has issued shall without any declaration, entry or act on the part of the Crown or by any officer, cease and the claim shall forthwith be open for prospecting and staking out,

Causes of
forfeiture of
mining claim

- (a) If the license of the holder has expired, and has not been renewed;
- (b) If, without the consent in writing of the Recorder or Commissioner, or for any purpose of fraud or deception or other improper purpose the holder removes or causes or procures to be removed any stake or post forming part of the staking out of such mining claim, or for any such purpose changes or effaces or causes to be changed or effaced any writing or marking upon any such stake or post;
- (c) If the prescribed work is not duly performed;
- (d) If any report under subsection 3 of section 78 is not made and deposited with the Recorder as therein required;
- (e) If the application and payment for the patent required by sections 106 and 107 are not made within the prescribed time. 8 Edw. VII. c. 21, s. 84 (1); 9 Edw. VII. c. 26, s. 31 (2).

(2) No person other than the Minister or an officer of the Bureau of Mines or a licensee interested in the property affected shall be entitled to raise any question of forfeiture except by leave of the Commissioner. Proceedings raising questions of forfeiture shall not be deemed to be or be entered as disputes under section 63. 8 Edw. VII. c. 21, s. 84 (2); 2 Geo. V. c. 8, s. 11.

Proceedings
as to
forfeiture.

85.—(1) Forfeiture or loss of rights under section 84 shall be avoided if within three months after default,

Forfeiture postponed in certain cases.

- (a) In a case under paragraph (a) the holder of the claim obtains a special renewal license which shall be so marked and shall be issued only upon payment of three times the prescribed license fee;
- (b) In a case under paragraph (d) the holder files a proper report and pays therewith a special fee of \$25.

(2) Where compliance with any of the other requirements mentioned in section 84 has been prevented by pending pro-

Relieving
against for-
feiture in other
cases.

ceedings or by any other special cause not reasonably within the control of the holder the Commissioner within three months after default may upon such terms as to compensation for expenses incurred by any other licensee who has acquired any interest in the claim during such period and upon such other terms as he may deem just make an order relieving the person in default from the forfeiture or loss of rights and upon compliance with the terms if any so imposed the order may be filed with the Recorder and thereupon the interest or rights forfeited or lost shall re-vest in the person so relieved.

Entry of
forfeiture.

(3) The Recorder upon any forfeiture or abandonment of or loss of rights in a mining claim shall forthwith enter a note thereof with the date of the entry upon the record of the claim and mark the record of the claim "Cancelled," and shall forthwith post up in his office a notice of the cancellation. 8 Edw. VII. c. 21, s. 85; 2 Geo. V. c. 8, s. 12.

Relief
against
forfeiture by
Lieutenant-
Governor
in Council.

86. The Lieutenant-Governor in Council, upon the recommendation of the Minister, may upon such terms, if any, as to compensation in respect of any intervening right or otherwise as he may deem just, relieve against any forfeiture or loss of rights under section 84 which he deems to be a hardship and re-vest the forfeited right or interest in the person who would but for the forfeiture have been entitled thereto. 8 Edw. VII. c. 21, s. 86.

Interest of
joint holder on
expiry of his
license.

87. In the case of joint holders where the interest of a holder has ceased by reason of the expiration of his license, such interest shall, if the Minister so directs, pass to and vest in the other holders in proportion to their interests in the claim. 8 Edw. VII. c. 21, s. 87.

Death of
licensee before
record or of
holder before
patent.

88. Where a licensee in whose name a mining claim has been staked out dies before the claim is recorded, and where the holder of a claim dies before issue of a patent for the claim no other person shall, without leave of the Commissioner, be entitled to stake out or record a mining claim upon any part of the same lands or to acquire any right, privilege or interest in respect thereof within twelve months after the death of such licensee or holder, and the Commissioner may within such twelve months make such order as may seem just for vesting the claim in the representatives of such holder notwithstanding any lapse, abandonment, cancellation, forfeiture or loss of rights under any provision of this Act. 8 Edw. VII. c. 21, s. 88.

INSPECTION OF CLAIMS.

Inspection by
Commissioner,
Recorder or
Inspector.

89.—(1) The Commissioner or the Recorder may inspect or order an inspection of and an Inspector or other officer appointed by the Minister may inspect a mining claim at any time with or without notice to the holder for the purpose of

ascertaining whether the provisions of this Act have been complied with, but after the granting of the Certificate of Record no such inspection shall, except by order of the Commissioner, be made for the purpose of ascertaining whether a discovery of valuable mineral in place has been made or whether the claim has been staked out in the prescribed manner.

Exception.

(2) Unless notice of the inspection has been given to the holder of the claim at least seven clear days prior thereto, either personally or by registered letter addressed to him at his address appearing on record in the Recorder's books he may apply to the Commissioner or to the Recorder for a re-inspection and the same shall be granted if it appears that the holder of the claim has been prejudiced by the want of notice.

Application by holder for re-inspection.

(3) The Commissioner or Recorder may in any dispute, appeal or other proceeding before him make or order with or without notice a view or inspection of any mining claim or of any lands or other property. 8 Edw. VII. c. 21, s. 89.

View or inspection in disputes, appeals, etc.

90.—(1) Every Special Mining Division and every other part of Ontario which may be so designated by Order in Council published in the *Ontario Gazette*, shall constitute and be known as a "Complete Inspection Area."

"Complete Inspection Area."

(2) A certificate of Record of the staking out of a mining claim in a Complete Inspection Area shall not be granted by the Recorder until the alleged discovery of valuable mineral upon which the application for the claim is based has been inspected and finally allowed.

Certificate not to be granted before discovery allowed.

(3) Upon a special application in writing the Recorder may direct immediate inspection of the discovery.

Immediate inspection.

(4) Upon the establishment of a new Complete Inspection Area or upon the addition of territory to a Complete Inspection Area, all uninspected claims then existing therein shall be subject to the provisions of this section.

New areas subject to inspection.

(5) The limits of any Complete Inspection Area may by Order in Council published in the *Ontario Gazette* be altered or the whole or any part thereof withdrawn from the operation of this section.

Alteration of limits.

(6) An Order in Council under this section shall take effect from the date of the first publication thereof in the *Ontario Gazette*. 8 Edw. VII. c. 21, s. 90.

Publication of Order in Council.

91.—(1) A report of each inspection, except when made merely for the purpose of a dispute, appeal or other proceeding, shall be made in writing by the inspecting officer and shall be filed in the office of the Recorder who shall forthwith enter upon the record of the claim a note stating the effect of the report and the date of the entry.

Filing and entry of report of inspection.

Cancelling
claim upon
report.

(2) If the Recorder deems that upon the report the claim should be cancelled he shall mark the record of the claim "Cancelled" and affix his signature or initials and shall by registered letter mailed not later than the next day notify the holder of the claim and the disputant and other interested parties, if any, of the receipt and effect of the report, and where the claim is cancelled in consequence of the report the notice shall so state.

Appeal from
cancellation
or allowance
to the Com-
missioner.

(3) An appeal from the cancellation of the claim or from the entry by the Recorder in his record book of the allowance of the discovery may be taken to the Commissioner by the holder of the claim or by the disputant or other interested party, within the time and in the manner provided by section 133.

Effect of
cancellation.

(4) Upon the cancellation of a claim under this section the Recorder shall forthwith post up in his office a notice of the cancellation, and the land or mining rights comprised in such claim shall thereupon, unless withdrawn from prospecting and staking out, be again open to prospecting and staking out, but such staking out shall be subject to the result of any appeal by a licensee whose claim has been cancelled. 8 Edw. VII. c. 21, s. 91.

When dis-
covery to be
deemed conclu-
sive.

92. After a discovery has been inspected and allowed as a discovery of valuable mineral in place and the allowance entered by the Recorder upon the record of the claim it shall upon the expiration of the time for appeal from the report of inspection or upon the final allowance thereof upon appeal be deemed conclusively to be a discovery of valuable mineral in place, and the sufficiency of such discovery shall not thereafter be called in question in any cause, matter or proceeding in any Court or under this Act. 8 Edw. VII. c. 21, s. 92.

Right of holder
to copy of
report.

93. The holder of a mining claim or the disputant or other person interested shall be entitled on payment of the prescribed fee to receive from the Recorder a certified copy of any report of inspection of the claim filed with him. 8 Edw. VII. c. 21, s. 93.

WORKING PERMITS.

Right to obtain
working permit
on staking out
area.

94.—(1) A licensee may obtain a working permit giving him, for the purpose of prospecting for minerals, the exclusive possession of an area of land open to prospecting and staking out, such area being of the form and acreage prescribed for a mining claim, by proceeding in the following manner:

(a) By staking the corners and marking the boundaries of such area and placing numbers and particulars upon the posts in the same manner as far as possible as is provided in section 54 in respect to mining claims, omitting only what is provided in

respect of discovery and the discovery post, but the words "working permit applied for" shall be written or placed on No. 1 post and each post shall be notched with three rings of notches not less than $\frac{1}{4}$ inch deep and not less than 2 inches apart, beginning about 2 inches from the top of the post.

- (b) By furnishing to the Recorder within 15 days after the staking out, an application in duplicate, Form 19, together with a map or plan, in duplicate, indicating generally and as definitely as possible the location of the area by reference to some ascertained boundary or locality, together with an affidavit, Form 20, stating the name of the licensee on whose behalf the application is made, and the letter and number of his license, the locality of the area as indicated by some general description and statement, and such other information as will enable the Recorder to lay down the area on his office map, and the time when the area was staked out, that at the time the area was staked out there was nothing on it to indicate that it was not open to be staked out for a working permit, that the deponent knows of no reason why the working permit should not be granted, and that he verily believes the applicant is entitled under the provisions of this Act to make the application. Where the area is situated more than ten miles in a straight line from the office of the Recorder, an additional day shall be allowed for furnishing the application for each additional ten miles or fraction thereof.
- (c) By procuring from the Recorder a certificate of the application, Form 21, and securely affixing the same to No. 1 post within three days after the granting of the certificate, and where the area is more than ten miles in a straight line from the office of the Recorder an additional day shall be allowed for each additional ten miles or fraction thereof.
- (d) By paying or securing to the owner of the surface rights in the case of land the surface rights of which have been theretofore granted, sold, leased or located, compensation for the injury or damage arising from the prospecting of such land, as prescribed by section 104.

(2) Upon compliance with the provisions of subsection 1 and payment of the prescribed fee, the applicant shall, after sixty days and within seventy days from the staking out of the area, procure from the Recorder a working permit, Form 22, which shall be for a period of six months from the date When working permit may issue,

Proviso.

of its issue. Provided that in case the granting of a working permit is prevented by the recording of a mining claim after the property was staked out for the working permit or by any pending dispute or by failure of the applicant after reasonable diligence to arrange with the owner of any surface rights as to the compensation the Recorder or the Commissioner may, notwithstanding the lapse of the seventy days, order the granting of the working permit. 8 Edw. VII. c. 21, s. 94.

Posting application.

95. The Recorder shall post up in his office a notice, Form 23, of every application for a working permit. 8 Edw. VII. c. 21, s. 95.

Number of permits which may be granted.

96. A licensee shall not apply for or hold in any license year more than three working permits in any one mining division or in territory not comprised in any mining division. 8 Edw. VII. c. 21, s. 96.

Rights of other licensees.

97. Until a working permit has been granted, and a notice thereof, Form 24, has been affixed to No. 1 post, the area included in the application shall be subject to prospecting and staking out as a mining claim by any licensee, but thereafter during the continuance of the working permit or the renewal thereof, if any, the holder thereof shall have the exclusive right to prospect and stake out on such area. Provided that at any time after the expiration of 60 days from the staking out where it seems just the Commissioner or the Recorder may order that the area shall not be open to prospecting or staking out until the working permit application has been disposed of, and such order shall be effective as soon as a duplicate or certified copy thereof is affixed to the No. 1 post. 8 Edw. VII. c. 21, s. 97.

Application of other provisions as to mining claims.

98. Except as otherwise expressly provided, a licensee staking out an area of land for a working permit shall in all respects be subject to the same restrictions and conditions as to prospecting and staking out as are applicable to a licensee prospecting and staking out a mining claim, and without limiting the general application of this section, sections 34, 36 to 41, subsection 3 of section 42, sections 44 to 52, 57, 58, 60 to 63, 69 to 77 and 79 to 89, so far as they can be made applicable, and modified so far as may be necessary, shall apply to an application for a working permit and to a working permit when granted. 8 Edw. VII. c. 21, s. 98.

Working conditions of working permit.

99. Commencing not later than the expiration of two weeks after the granting of a working permit, the holder shall perform upon the area described in the working permit work consisting of searching for minerals by sinking shafts or pits, digging trenches, making cross-cuts, boring by diamond or other drill, or other *bona fide* operations of a like kind to the extent of five days of eight hours per day in each week. Provided that he may perform such work during a lesser

period than six months, but so that the amount of work performed shall not at any time be less than that herein prescribed; but no work shall be required to be done between the 16th of November and the 15th of April, both days inclusive. 8 Edw. VII. c. 21, s. 99; 2 Geo. V. c. 8, s. 13.

No work need be done between 16th November and 15th April.

100. A working permit may be transferred, Form 25, and upon the transfer being recorded the transferee shall be entitled to the unexpired term of the working permit and any right of renewal thereof. 8 Edw. VII. c. 21, s. 100.

Transfer of working permit.

101. The Recorder may grant to the holder of a working permit who has complied with the requirements of this Act one renewal thereof, Form 26, for a period of six months, but the renewal shall be subject to the same requirements as to work to be performed and otherwise as the original working permit. 8 Edw. VII. c. 21, s. 101.

Right to renewal of working permit.

102. If the holder of a working permit makes a discovery of valuable mineral in place upon the area of land included therein he may stake out and record a mining claim thereon and the necessary variations may be made in the application for the recording of the claim and in the affidavit to be filed therewith. 8 Edw. VII. c. 21, s. 102.

Staking out claim on working permit area.

103. The decision or order of the Commissioner in respect of a working permit or of an application therefor or as to any right or interest thereunder or affected thereby shall be final and shall not be subject to appeal. 8 Edw. VII. c. 21, s. 103.

Decisions of Commissioner to be final.

SURFACE RIGHTS COMPENSATION.

104.—(1) Where the surface rights of land have been granted, sold, leased, or located, or where land is occupied by a person who has made improvements thereon which in the opinion of the Minister entitle him to compensation, a licensee who prospects for mineral, or stakes out a mining claim or an area of land for a working permit or a boring permit, or carries on mining operations upon such land shall compensate the owner, lessee, locatee, or occupant, for all injury or damage which is or may be caused to the surface rights by such prospecting, staking out or operations, and in default of agreement the amount and the manner, and time of payment of compensation shall be determined by the Commissioner upon application to him after notice to the persons interested, and, subject where the amount awarded exceeds \$1,000 to appeal to a Divisional Court, his order shall be final and may be enforced as provided in section 132 of this Act. 8 Edw. VII. c. 21, s. 104.

Right of owner of surface rights to compensation.

(2) The Commissioner may order the giving of security for payment of the compensation and may prohibit, pending the determination of the proceeding or until the compensation is

Prohibiting work pending settlement.

paid or secured, further prospecting, staking out or working by such licensee or any person claiming under him.

Other licensees not to prospect, etc., pending proceedings.

(3) Where an order is made prohibiting the prospecting, staking out or working of a mining claim under the provisions of subsection 2, no other licensee shall have the right to prospect or stake out a mining claim to the prejudice of the prohibited licensee while the proceeding is pending.

Lien for compensation.

(4) The compensation shall be a special lien upon any mining claim or other right or interest acquired by the licensee or any person claiming under him in the land so prospected, staked out or worked, and no further prospecting, staking out or working, except by leave of the Commissioner, shall be done by the licensee or any person claiming under him after the time fixed for the payment or securing of the compensation unless such compensation has been paid or secured as directed. 8 Edw. VII. c. 21, s. 104.

Reduction in area of claim where surface rights have been sold.

105. The Commissioner or the Recorder may reduce the area of any mining claim staked out where the surface rights have been granted, sold, leased or located, if in his opinion an area less than the prescribed area is sufficient for working the mines and minerals therein. 8 Edw. VII. c. 21, s. 105.

ISSUE OF PATENT FOR MINING CLAIM.

Right to patent of claim.

106.—(1) Upon compliance with the requirements of this Act and upon payment of the purchase price as provided in section 107, the holder of a mining claim shall be entitled to a patent for the claim.

Application for patent.

(2) The application, Form 27, for the patent shall be made to the Recorder within three years and six months from the date of the recording of the claim. 8 Edw. VII. c. 21, s. 106.

Price to be paid for patent.

107. The price per acre of Crown lands patented as mining claims shall be \$3 in surveyed territory and \$2.50 in unsurveyed territory, and the price per acre for mining rights and quarry claims so patented shall be one-half the price payable for Crown lands. 8 Edw. VII. c. 21, s. 107.

When right to free patent.

108. A licensee who is the first discoverer of valuable mineral in place upon land not in a Crown Forest Reserve at a point not less than five miles from the nearest known mine, vein, lode or deposit of the same kind of mineral and who has staked out a mining claim thereon and has complied with the requirements of this Act shall be entitled to a patent without payment of the price fixed by the next preceding section. 8 Edw. VII. c. 21, s. 108.

Reservation for roads in patents.

109. In all patents for mining claims within the Districts of Algoma, Thunder Bay, Rainy River, Manitoulin, Sudbury

and Temiskaming, and that part of the District of Nipissing which lies north of the French River, Lake Nipissing and the River Mattawan there shall be a reservation for roads of 5 per centum of the quantity of land granted and the Crown or its officers may lay out roads on such mining claims where deemed proper. 8 Edw. VII. c. 21, s. 109.

110. Every patent for Crown lands or mining rights by which it is intended to vest in the patentee the mines and minerals therein or any part thereof or any rights in connection therewith, shall state that it is issued in pursuance of this Act, or of the former Act under which it is issued. 8 Edw. VII. c. 21, s. 110.

111. Every patent of Crown lands which purports to be issued in pursuance of this Act shall unless otherwise expressly stated vest in the patentee for the estate thereby granted all title of the Crown in such land and all mines and minerals therein. 8 Edw. VII. c. 21, s. 111.

112.—(1) Every patent of Crown lands sold or granted as mining lands shall contain a reservation of all pine trees and such pine trees shall continue to be the property of the Crown, and any person holding a license from the Crown to cut timber on such land may at all times during the continuance of the license enter upon the land and cut and remove such trees, and may make all necessary roads for that purpose; provided that the patentee may cut and use such trees as may be necessary for the purpose of building, fencing and fuel on the land so patented, or for any other purpose necessary for the working of the mines therein, and may also cut and dispose of all trees required to be removed in clearing such part of the land as may be necessary for mining purposes, but subject as regards pine trees to the payment of the value thereof to the Crown or to the timber licensee or other person authorized to cut such pine trees, as the case may be; Provided, however, that where such land heretofore or hereafter granted is not under timber license or in a Forest Reserve, the owner thereof may without payment of Crown dues cut thereon and use for mining purposes thereon or on any adjoining lands owned by him any trees of the variety *Pinus Banksiana*, commonly known as "jackpine."

(2) Any dispute between the patentee or those claiming under him and the timber licensee or other person interested with regard to the quantity or value of the pine timber so cut or disposed of or otherwise regarding the trees cut shall be determined by the Minister, whose decision shall be final.

(3) This section shall not confer upon the patentee of mining rights only any right to cut timber upon the land described in the patent. 8 Edw. VII. c. 21, s. 112; 2 Geo. V. c. 8, s. 14.

SURVEY OF CLAIM BEFORE ISSUE OF PATENT.

Survey of claim
in unsurveyed
territory before
patent issues.

113.—(1) Before a patent of a mining claim in unsurveyed territory is issued the claim shall be surveyed by an Ontario Land Surveyor at the expense of the applicant who shall furnish to the Recorder with his application the surveyor's plan in duplicate, field notes and description showing a survey in conformity with this Act and to the satisfaction of the Minister.

Mode of survey

(2) In surveying a mining claim in unsurveyed territory the surveyor shall run the boundaries of the claim by running straight lines from No. 1 post at the northeast angle of the claim to No. 2 post at the southeast angle thereof, from No. 2 post to No. 3 post at the southwest angle thereof, and from No. 3 post to No. 4 post at the northwest angle thereof, and from No. 4 post to No. 1 post.

Marking
boundaries.

(3) The surveyor shall mark out the side lines on the ground by blazing the adjacent trees distinctly on three sides, one blaze on each side in the direction of the line and one on that side by which it passes. 8 Edw. VII. c. 21, s. 113 (1-3).

Surveyors'
posts on
claims.

(4) He shall plant at each angle of the claim an iron post with the recorded number and letter or letters, if any, of the claim permanently marked thereon, and at or near each iron post shall also plant a large wooden guide post marked with such number and letter or letters. 2 Geo. V. c. 8, s. 15.

Connection of
survey with
other points.

(5) He shall in his discretion connect such survey with some known point in a previous survey or with some other known point or boundary so that the claim may be laid down on the office maps in the Department. 8 Edw. VII. c. 21, s. 113 (5).

Duty of
surveyor.

(6) No such survey, except as herein provided, shall be made within a distance of fifteen miles in a straight line from the Recorder's office without the written consent or direction of the Recorder or of the Commissioner or the Minister or Deputy Minister, and it shall be the duty of the surveyor before proceeding with the survey to examine the application and sketch or plan of the claim or certified copies thereof and before completing or filing his survey to ascertain by careful examination of the ground and by all other reasonable means in his power whether or not any other subsisting claim conflicts with the claim he is surveying, and no survey shall be accepted unless accompanied by the certificate signed by the surveyor in the following form:

Form of
certificate.

I hereby certify that I have carefully examined the ground included in mining claim No., surveyed by me, and have otherwise made all reasonable investigations in my power to ascertain if there was any other subsisting claim conflicting therewith, and I certify that I have found no trace or indication and have no knowledge or information of any such claim except as follows: (*if none so state, if any give particulars*).

(7) A surveyor who surveys a claim without the written consent or direction mentioned in subsection 6 shall be guilty of an offence against this Act and shall incur a penalty not exceeding \$50.

Penalty for misconduct of surveyor.

Provided that where a claim is fifteen miles or more in a straight line from the Recorder's office, and the consent or direction mentioned in subsection 6 has not been refused, the surveyor may nevertheless survey the claim, but before signing the certificate mentioned in subsection 6 he shall in all other ways proceed as set out in that subsection, and shall, along with his survey, file with the Recorder a sworn statement setting forth the circumstances under which the survey was made without the consent or direction aforesaid.

Proviso.

114. Where upon an application for a patent of a mining claim in surveyed territory the Minister is of opinion that a survey is necessary he may direct that a survey thereof shall be made at the expense of the applicant, and such survey unless otherwise ordered shall comply with the same requirements as a survey of a mining claim in unsurveyed territory.

Minister may direct survey of claim in surveyed territory.

8 Edw. VII. c. 21, s. 114.

115. The surveyor immediately after the completion of every survey of a mining claim made by him shall deliver or forward by registered post to the Minister by his official title a certified copy of the plan and of his field notes and a description of the claim.

Surveyor to forward certified copy of plan to Minister.

116.—(1) If it is found upon a survey required or authorized by this Act that the area of a mining claim exceeds the prescribed acreage the Minister may direct the issue of a patent for a portion thereof not exceeding the prescribed acreage.

Reduction of area of claim found to exceed prescribed acreage.

(2) The reduction in unsurveyed territory shall, where practicable, be made as follows:—Keeping No. 1 post as the northeast corner and taking the straight line joining No. 1 and No. 2 posts, or if that line exceeds 20 chains in length the northerly 20 chains of it, as the eastern boundary; keeping the southern and western boundaries respectively parallel to or coinciding with the straight lines adjoining No. 2 and No. 3 and No. 4 posts, but shortening each of these boundaries to 20 chains where it exceeds that length, and in the case of a mining claim in a Special Mining Division shortening the southern boundary to 10 chains where it exceeds 10 chains; and in each case connecting the northwest corner so established with No. 1 post for the northern boundary.

Manner in which reduction to be made.

8 Edw. VII. c. 21, s. 116.

PART III.—PLACER MINING.

Placer mining
claims.

117. A licensee, who makes a discovery of a natural stratum, bed or deposit of sand, earth, clay, gravel or cement carrying gold, or platinum, or precious stones, which is probably of such size and character as to be likely to be workable at a profit may stake out and record a mining claim to be called a "Placer Mining Claim," thereon, and the provisions of this Act, as to the staking out and recording of a mining claim upon the discovery of valuable mineral in place thereon, shall as far as practicable apply to the staking out of a placer mining claim as if the words "a natural stratum bed or deposit of sand, earth, clay, gravel or cement, carrying gold or platinum, or precious stones, which is probably of such a size and character as to be likely to be workable at a profit," were used instead of "valuable mineral in place," and the other provisions of this Act as to mining claims shall also, as far as practicable, apply to a "Placer Mining Claim," and "mining claim" wherever used in this Act shall, unless repugnant to the context, be read as including placer mining claim. 8 Edw. VII. c. 21, s. 117.

PART IV.—QUARRY CLAIMS.

Staking out
claims to lime-
stone, marble,
etc.

118.—(1) Where not situated within a Complete Inspection Area or within a Special Mining Division Crown lands containing any natural bed, stratum or deposit of limestone, marble, clay, marl, peat, building stone, sand or gravel, may be staked out and recorded as a mining claim, to be called a "Quarry Claim," upon proof being furnished to the satisfaction of the Recorder that such bed, stratum, or deposit is of a size and character to be workable for any one or more of such substances, but all valuable minerals shall be reserved therefrom.

What land
excluded.

(2) No such staking out shall be done on any land located, sold or patented under *The Public Lands Act*, and such substances, unless expressly reserved, shall be deemed to have been conveyed by any patent heretofore or hereafter issued under any of the said Acts; provided that this section shall not affect any rights heretofore acquired in any such substances or the land containing the same.

Effect of
quarry
claim.

(3) A quarry claim shall not interfere with the right of a licensee to stake out a mining claim on the land embraced in the quarry claim, and as against such licensee the holder of a quarry claim shall have the same and no greater rights than if he were the owner of the surface rights and the quarry claim was a claim in respect of mineral rights.

Rights and
duties of
holder.

(4) Except as provided in subsection 3, the rights and duties of the holder of a quarry claim shall be the same as those of the holder of a mining claim, and all the provisions

of this Act as to mining claims shall, except where inappropriate, apply to quarry claims. 8 Edw. VII. c. 21, s. 118.

PART V.—PETROLEUM, GAS, COAL, AND SALT.

119.—(1) A licensee may obtain from the Minister a boring permit, Form 28, granting him the exclusive right for a period of one year to prospect for petroleum, natural gas, coal, or salt upon an area of land open for prospecting and staking out in those portions of the Province lying north and west of the River Mattawan, Lake Nipissing, and the French River, by

- (a) Staking out or having another licensee stake out on his behalf and in his name such area by planting or erecting a post at each corner thereof in the manner and with the numbering provided by section 54, and writing or placing upon each post the words "Boring permit applied for," with his name and the letter and number of his license, and where the staking out is done by another licensee also the name of such licensee and the letter and number of his license; the date of the staking out and a statement of the area to be included in the application; Boring permits to explore for oil, gas, coal or salt.
- (b) Furnishing to the Recorder an application in duplicate, Form 29, verified by an affidavit, Form 30, within fifteen days after the staking out; Application to Recorder.
- (c) Forwarding to the Minister not more than ninety days thereafter a plan or diagram showing as nearly as possible the situation of the lands, and a written description of the same, including, if the area is in surveyed territory, the number of the lots and concessions or sections or quarter-sections or other subdivisions, together with a fee of \$100; and Application to Minister.
- (d) Providing to the satisfaction of the Minister that he has paid or secured to the owner of the surface rights, if any, the compensation agreed upon or determined as provided in section 104 for any injury or damage which is or may be caused to the surface rights, or, in default of agreement, that he has paid or secured such compensation, as determined in the manner provided by section 104. Compensation to owner of surface rights.

(2) One duplicate of the application shall be forthwith posted up by the Recorder in his office and the other forwarded by him to the Minister. Posting applications.

(3) If the area staked out is more than ten miles from the office of the Recorder, one additional day for every additional ten miles or fraction thereof shall be allowed for furnishing the application to the Recorder. Additional time allowed on account of distance.

Form of area
to be included
in permit.

(4) The area of land included in a boring permit, if in unsurveyed territory, shall be rectangular in form and shall not exceed six hundred and forty acres in extent, the boundary lines thereof being due north and south and due east and west astronomically, and if in surveyed territory need not be rectangular in form, but may consist of any number of contiguous lots, quarter-sections or subdivisions of a section not containing in all more than six hundred and forty acres.

Working con-
ditions.

(5) The holder of a boring permit shall enter upon the area described therein within two months from the granting of the permit, and during the term of the permit shall expend thereon in actual boring, sinking, driving or otherwise searching for petroleum, natural gas, coal, or salt a sum amounting to not less than two dollars per acre.

Renewal of
permit.

(6) Upon proof being furnished to the Minister that such expenditure has been made and that all other terms and conditions of the permit have been complied with, the Minister, at the expiration of the boring permit, may grant one renewal of the same for one year upon payment of a fee of \$100, and the renewal shall be subject to the like conditions as to expenditure and otherwise as the original permit.

Transfer of
permit.

(7) The holder of a boring permit may, with the consent of the Minister, endorsed thereon, transfer, Form 31, all his rights in the permit or the land included therein, and upon the consent being given the licensee to whom the permit is transferred shall thereupon be entitled to the unexpired term of the permit, with any right of renewal thereof. 8 Edw. VII. c. 21, s. 119.

Lease may
issue on dis-
covery.

120.—(1) Upon the holder of a boring permit proving to the satisfaction of the Minister that he has discovered petroleum, natural gas, coal or salt, or any one or more of such substances in commercial quantities upon the land included therein, the Minister may direct the issue to the holder of the permit of a lease of the land or any portion of it for a term of ten years at an annual rental of one dollar per acre, payable in advance, and subject to the expenditure of not less than two dollars per acre per annum, in obtaining petroleum, natural gas, coal or salt, or any one or more of such substances therefrom, or in actual *bona fide* operations or works undertaken or made for the purpose of obtaining the same. The lessee shall have the right of renewal of such lease at the expiration of the first term of ten years for a further term of ten years at the same rental, and at the expiration of the second term for a term of twenty years at such renewal rental as may then be agreed upon or provided by statute or regulations.

Renewal.

Regulations
as to leases.

(2) Every such lease shall contain such other conditions, stipulations and provisoes as the Lieutenant-Governor in Council may prescribe, and shall be forfeited and void if the

rental payable thereunder is not paid when due, or upon failure to expend the money required by subsection 1 to be laid out or upon failure to comply with any of the terms and conditions of the lease. Provided that relief from forfeiture for failure to pay rent when due may be had by the payment of all arrears within ninety days after the same became payable. Proviso.

(3) The right conferred by any such lease upon the lessee shall be to enter upon the land described, and to dig, bore, sink, drive or otherwise search for and obtain, raise and remove petroleum, natural gas, coal and salt, or any one or more of such substances. All other valuable minerals shall be reserved to the Crown, and any holder of a Miner's License may at all times go upon the said land and prospect the same and stake out a mining claim thereon, but subject to compensating the lessee for any injury or damage to his interest in the land at the time and in the manner provided in section 104, and may obtain a patent therefor, but such patent shall reserve the petroleum, natural gas, coal and salt, in, on, or under such land. Rights of lessee.
Other mineral to be reserved.

(4) No such lease shall issue for land in unsurveyed territory until a plan in triplicate made by an Ontario Land Surveyor, field notes and description, shall be filed in the Department, showing a survey in conformity with this Act, and to the satisfaction of the Minister. Survey required in unsurveyed territory.

(5) The holder of a boring permit or of a lease for petroleum, natural gas, coal or salt, shall not be entitled to the timber upon the land included in such permit or lease but if the same are not covered by timber license and have not been located, sold or patented under *The Public Lands Act*, may, with the permission of the Minister, and upon payment of such rates as may be fixed, cut and use such timber or trees as may be necessary for boring and working the said land. Timber to be reserved.
8 Edw. VII. c. 21, s. 120.

PART VI.—DREDGING LEASES.

121.—(1) The Lieutenant-Governor in Council may make regulations respecting the issue of leases authorizing the holders thereof to dredge in any river, stream or lake, in, on or flowing through Crown lands, or the bed of which belongs to the Crown, for the purpose of recovering any valuable mineral therefrom, and every Order in Council made under this section shall take effect from the date of the first publication thereof in the *Ontario Gazette*. Regulations as to dredging leases.

(2) Every such lease shall provide for the payment in advance of an annual rental of not less than twenty dollars per mile in length of any such river, stream or lake, and shall not be for a greater term than ten years, renewable at the expira-

tion thereof for a further term of not more than ten years, and shall contain such provisions as may be required by the Lieutenant-Governor in Council for protecting all other public interests in such river, stream or lake, including the driving of logs and timber, and navigation. 8 Edw. VII. c. 21, s. 121.

PART VII.—MINING PARTNERSHIPS.

Forming mining partnerships.

122.—(1) Two or more persons, each being at least 18 years of age, or one or more of such persons and a company may form a partnership herein called a “Mining Partnership” for the purpose of prospecting for minerals and acquiring mining claims or any other right or interest under the provisions of this Act, and the performance of working conditions and doing work on a mining claim or any other act or thing which may be lawfully done before the issue of a patent for the claim, by signing personally or by attorney duly authorized in writing annexed thereto a certificate, Form 32, setting forth

Certificate to be filed.

- (a) The name, address and occupation of each of the partners;
- (b) The partnership name;
- (c) The total number of shares in the partnership;
- (d) The number of shares owned by each partner;
- (e) The date of the commencement of the partnership and the date on which it is to terminate; and
- (f) The name, address and occupation of some person residing in Ontario or of a company having its head office in Ontario authorized, and, in writing annexed to or forming part of the certificate, consenting to act as agent of the partnership.

Recording partnership.

(2) A mining partnership may be recorded by filing with any Recorder a certificate in accordance with subsection 1 or a copy thereof certified by a Recorder to be a true copy of a certificate recorded in his office and on payment of the prescribed fee.

Right to miner's license

(3) After being recorded a mining partnership shall be entitled to a miner's license.

Contracts by recorded agent to be binding.

(4) A contract entered into in writing on behalf of a mining partnership by the recorded agent thereof shall be binding upon the partnership.

Revocation of authority of agent.

(5) The member or members of a mining partnership owning a majority of the shares may revoke the appointment of the agent, Form 33, but the revocation shall not take effect until a certificate, Form 34, signed by such member or members substituting another qualified agent who, in writing

annexed to or forming part of such certificate, consents to act as agent for the partnership has been filed in all the offices in which the partnership is recorded.

(6) If the recorded agent of a mining partnership dies, the member or members owning a majority of the shares may, by signing a certificate, Form 34, appoint another qualified agent who, in writing annexed to or forming part of the certificate, consents to act as agent for the partnership, but such appointment shall not take effect until recorded in all the offices in which the partnership is recorded.

Death of
recorded agent.

(7) A share in a mining partnership shall be deemed to be personal estate and may be transferred to any person, mining partnership or company authorized to hold shares in a mining partnership by the owner thereof or by his executor, or administrator or by the assignee for the benefit of the creditors of the owner or by a sheriff or bailiff in due course of law by signing and filing with the Recorder a transfer thereof, Form 35.

Transfer of
share in mining
partnership.

(8) A person to whom a share is transferred or to whom it passes by operation of law or otherwise, upon filing in every office in which the partnership is recorded the instrument of transfer or will or letters of administration or other instrument under which the share passes or a certified or sworn copy thereof, shall become a member of the partnership.

Filing transfer
of share,—effect
of.

(9) A mining partnership may be dissolved before the expiration of the time fixed by the certificate of partnership by filing in all the offices in which the partnership is recorded a certificate of dissolution, Form 36, signed by all the members or their attorneys duly authorized in writing annexed to the certificate, but a mining partnership shall not be dissolved by the death of any member.

Dissolution of
partnership.

(10) Unless the certificate of dissolution otherwise provides the dissolution of a mining partnership shall not constitute a revocation of the authority of the recorded agent of the partnership, but thereafter the agent instead of being the agent of the partnership shall be the agent of the individual members or their legal representatives, as the case may be, and may bind the interest of the individual partners or their legal representatives in selling, mortgaging or otherwise dealing with and transferring in the partnership name, the property of the partnership until the affairs of the partnership are finally wound up.

Not to be dis-
solved by
death.

Dissolution not
to revoke
authority of
agent.

(11) Nothing in this section shall relieve a recorded agent from liability for any breach of duty committed by him in wilfully disobeying the instructions given to him by the owners of a majority of the shares. 8 Edw. VII. c. 21, s. 122.

Agent not
relieved from
liability for
breach of his
instructions.

PART VIII.—PROCEEDINGS BEFORE COMMISSIONER AND RECORDER.

POWERS OF COMMISSIONER.

Claims, rights and disputes to be determined by Commissioner.

123.—(1) Except as provided by sections 182 and 183, no action shall lie nor shall any other proceedings be taken in any Court as to any matter or thing upon which before the issue of the patent any right, privilege or interest conferred by or under the authority of this Act depends, but save as in this Act otherwise provided, every claim, question and dispute in respect to such matter or thing, shall be determined by the Commissioner, and in the exercise of the power conferred by this section the Commissioner may make such order and give such directions as he may deem necessary for making effectual and enforcing compliance with his decision.

Matters to be determined by Commissioner.

(2) Without limiting the general powers conferred by the next preceding subsection, it is declared that the Commissioner shall have jurisdiction and power to hear and determine all claims, questions and disputes arising before patent between contesting claimants or between the Crown and a claimant

- (a) For or in respect to any unpatented mining claim, quarry claim, mining lands or mining rights or any right, title or interest therein;
- (b) As to the existence, validity or forfeiture of any unpatented mining claim, quarry claim, working permit or boring permit, or application therefor, or of any right or privilege or interest which may before patent be acquired under the provisions of this Act;
- (c) As to the boundaries and extent of the lands or rights included in any unpatented mining claim, quarry claim, working permit or boring permit, or application therefor, or in any such other right, privilege or interest;
- (d) As to the right to possession of or the right to enter or prospect upon or stake out any unpatented mining claim, quarry claim, mining lands or mining rights;
- (e) As to any right claimed under regulations made by the Lieutenant-Governor in Council under the authority of subsection 2 of section 187.
- (f) As to whether and to what extent any unpatented mining claim or quarry claim or any working permit or boring permit or any other right, privilege or interest acquired by anyone under the provisions of this Act has before patent been

transferred to or become vested in any other person. 8 Edw. VII. c. 21, s. 123.

124. A subpoena may issue out of the Supreme Court or out of any County or District Court for the purpose of compelling the attendance of witnesses and production of documents and things in any proceeding before the Commissioner, and the Commissioner shall also have in respect to matters which may be dealt with by him under the provisions of this Act all the powers of summoning and enforcing the attendance of witnesses and compelling them to give evidence and produce documents and things which may be conferred upon Commissioners appointed under the authority of *The Public Inquiries Act*. 8 Edw. VII. c. 21, s. 124. Subpoenas and summonses to witnesses. Rev. Stat. c. 18.

125. In the exercise of the jurisdiction and power conferred by this Act, the Commissioner shall have all the authority and power conferred upon an official referee by *The Judicature Act* or by *The Arbitration Act*. 8 Edw. VII. c. 21, s. 125. Powers as referee. Rev. Stat. cc. 56, 65.

126. In any matter or proceeding which may come before him under this Act, the Commissioner may make an order restraining any of the parties from doing any act which in his opinion ought not to be done or ought not to be done pending the final determination of any question involved in such matter or proceeding. 8 Edw. VII. c. 21, s. 126. Power to restraining party.

127. The Commissioner shall also have all the powers which by *The Public Lands Act* are conferred on commissioners appointed under the authority of that Act. 8 Edw. VII. c. 21, s. 127. Preventing trespasses on public lands. Rev. Stat. c. 28.

128. Where in the opinion of the Court in which an action is brought, or of a Judge thereof, the proceedings may be more conveniently dealt with or disposed of by the Commissioner, the Court or Judge may, upon the application of any party or otherwise, and at any stage of the proceedings, refer the action or any question therein to the Commissioner as an Official Referee, on such terms as to the Court or Judge may seem just, and the Commissioner shall thereafter give directions for the continuance of the proceedings before him, and, subject to the order of reference, all costs shall be in his discretion. 8 Edw. VII. c. 21, s. 128. Referring actions, etc., to Commissioner.

129. Where a proceeding is brought in any Court which should have been taken before the Commissioner, the Court or Judge may upon the application of any party or otherwise, and at any stage of the proceeding transfer it to the Commissioner, and thereafter it shall be deemed to be a proceeding before him under the provisions of this Act, and there shall be no appeal from the decision of the Commissioner except as provided by this Act. 8 Edw. VII. c. 21, s. 129. Transfer of proceedings from court to Commissioner.

POWERS OF RECORDER.

Concurrent jurisdiction of Recorder.

130.—(1) A Recorder, as to lands situate in his mining division, shall have all the powers conferred on the Commissioner by sections 123 and 124.

When Recorder to decide matter in first instance.

(2) Any question arising prior to the issue of a certificate of record of a mining claim or the granting of a working permit as to whether the provisions of this Act regarding a mining claim, working permit, application or working permit have been complied with, unless the Commissioner otherwise orders or unless the Recorder with the consent of the Commissioner transfers such question to the Commissioner for his decision, shall in the first instance be decided by the Recorder.

Note of decision to be made by Recorder.

(3) The Recorder shall forthwith enter in the books of his office a full note of every decision made by him, and shall notify the persons affected thereby of such decision by registered letter mailed not later than the next day after the entry of such note.

Certificate of decision.

(4) Every person affected by the decision shall be entitled upon payment of the prescribed fee to receive from the Recorder a certificate thereof which shall contain the date of the entry of such decision in the books of the Recorder.

(5) The decision of the Recorder shall be final and binding unless appealed from as in this Act provided. 8 Edw. VII. c. 21, s. 130.

Recorder may direct proceedings before him.

131.—(1) The Recorder may give directions for the conduct and carrying on of the proceedings before him, and in so doing he shall adopt the cheapest and most simple methods and machinery for determining the questions raised before him.

Where no direction.

(2) Where no such directions are given, the provisions relating to procedure before the Commissioner as far as the same may be applicable, shall apply.

Costs.

(3) The Recorder shall not have power to award costs, but may in his discretion allow the fees and conduct money of witnesses and may direct by whom the same shall be paid. 8 Edw. VII. c. 21, s. 131.

ENFORCEMENT OF ORDERS.

Making order of Commissioner or Recorder a judgment of the Court.

132. A duplicate of any order made by the Commissioner or by a Recorder may be filed in the office of the Clerk of Records and Writs or in the office of any Local Registrar or Deputy Clerk of the Crown of the Supreme Court, or in the office of the Clerk of the County or District Court of the County or District in which the land lie, and upon being so filed shall become an order of the Court in which it is filed and shall be enforceable as an order of such Court, but the

Court or a Judge thereof may stay proceedings thereon if an appeal is brought from the order. 8 Edw. VII. c. 21, s. 132.

APPEALS FROM RECORDER.

133.—(1) A person affected by the decision of, or by any act or thing, whether ministerial or judicial, done, or refused or neglected to be done by the Recorder, may appeal to the Commissioner, who shall decide the matter and make such order in the premises as he may deem just.

Right to appeal from Recorder to Commissioner.

(2) Upon an appeal from the decision of the Recorder the Commissioner may require or admit new or additional evidence or may re-try the matter.

Admission of further evidence on appeal.

(3) The appeal shall be by notice in writing filed in the office of the Recorder, Form 37, and served upon all parties adversely interested within fifteen days from the entry of the decision of the books of the Recorder, or within such further period not exceeding fifteen days, as the Commissioner may allow. Provided that if notice of appeal has been filed with the Recorder within the said time, and the Commissioner is satisfied that it is a proper case for appeal and that after reasonable effort any of the parties entitled to notice could not be served within such time, he may extend the time for appealing and make such order for substitutional or other service as he may deem just. Provided also that where a person affected has not been notified as provided in sections 91 or 130 and appears to have suffered substantial injustice and has not been guilty of undue delay, the Commissioner may allow such person to appeal.

Mode of appealing.

(4) The notice of appeal shall contain or have endorsed upon it an address for service at some place not more than five miles distant from the Recorder's office, and any notice or document relating to the appeal shall be sufficiently served upon the appellant if left with a grown-up person at such place, or if no such person can there be found then if mailed by registered post addressed to the appellant at the post office at or nearest to such place.

Address for service to be on notice of appeal.

(5) If no address for service is given as provided in the next preceding subsection, any such notice or document may be served upon the appellant by posting up the same in the Recorder's office. 8 Edw. VII. c. 21, s. 133.

Mode of service when no address given.

APPEAL TO MINISTER.

134.—(1) An appeal shall lie from any decision of the Commissioner in respect to any ministerial duty of the Recorder to the Minister only, and the decision of the Minister shall be final and shall not be subject to appeal.

Appeal to Minister as to ministerial acts of Recorder.

(2) The appeal to the Minister shall be by notice in writing filed with the Bureau of Mines and served upon every adverse

Mode of appealing to Minister.

party within fifteen days after the date of the decision of the Commissioner, or within such further time as may be allowed by the Minister. 8 Edw. VII. c. 21, s. 134.

PROCEDURE BEFORE COMMISSIONER.

Style of proceedings.

135. The words "*The Mining Act of Ontario*" shall be written or printed on all notices and other documents in every matter, application and appeal taken before the Commissioner. 8 Edw. VII. c. 21, s. 135.

Obtaining appointment.

136.—(1) An appointment shall be obtained from the Commissioner for the hearing of an appeal or of a dispute mentioned in section 63 or of any claim, question or dispute cognizable by him.

Material.

(2) In any matter or proceeding other than an appeal the Commissioner may, if a Certificate of Record has been issued, require that the applicant shall satisfy him that there is reasonable ground for the application or may in any such case, or in any case where leave to take the proceeding is necessary, give the appointment or leave only upon such terms as to security for costs or otherwise as may seem just.

Application for appointment.

(3) The appointment may be obtained upon a verbal or written application.

Service of appointment.

(4) A copy of the appointment shall be served upon all parties concerned, and except in the case of an appeal or dispute under section 63, a notice, Form 38, stating shortly the nature and particulars of the right, question or dispute, shall also be served. 8 Edw. VII. c. 21, s. 136.

Commissioner to give all necessary directions.

137.—(1) The Commissioner may give directions for having any matter or proceeding heard and decided without unnecessary formality, may order the filing, serving of statements, particulars, objections or answers, the production of documents and things, and the making of amendments, may give such other directions for the procedure and hearing as he may deem proper, and may make any appointment, notice or other proceeding returnable forthwith or at such time as he may deem proper, and may order or allow such substituted or other service as in the circumstances may seem proper.

Place of hearing.

(2) In appointing the place of hearing, the Commissioner shall select the place that he may deem most convenient for the parties within the county or district or one of the counties or districts in which the lands or mining rights affected are situate, unless it appears to him desirable that the hearing should be in some other county or district.

Hearing to be proceeded with promptly.

(3) The hearing shall be proceeded with as promptly as possible, having regard to the interests of the parties concerned.

(4) The Commissioner may take or order the evidence of any witness to be taken at any place within or without Ontario. Taking evidence.

(5) The Commissioner may hear and dispose of any application not involving the final determination of the matter or proceeding at any place he may deem convenient, and his decision upon any such application shall be final and shall not be subject to appeal. 8 Edw. VII. c. 21, s. 137. Interlocutory applications.

138. The Commissioner may obtain the assistance of engineers, surveyors, or other scientific persons, who may under his order view and examine the property in question, and in giving his decision he may give such weight to their opinion or report as he may deem proper. 8 Edw. VII. c. 21, s. 138. Commissioner may obtain expert assistance.

139.—(1) The Commissioner, in addition to hearing the evidence adduced by the parties, may require and receive such other evidence as he may deem proper, and may view and examine the property in question and give his decision upon such evidence or view and examination, or may appoint a person to make an inspection of the property, and may receive as evidence and act upon the report of the person so appointed. Commissioner may call for evidence, or proceed on view.

(2) Where the Commissioner proceeds partly on a view or on any special knowledge or skill possessed by himself, he shall put in writing a statement of the same sufficiently full to enable a judgment to be formed of the weight which should be given thereto. Statement of view or of special knowledge.

(3) When the parties consent in writing, the Commissioner may proceed wholly upon a view, and in such case his decision shall be final and shall not be subject to appeal. 8 Edw. VII. c. 21, s. 139. Commissioner proceeding wholly on view.

140. The Commissioner shall give his decision upon the real merits and substantial justice of the case. 8 Edw. VII. c. 21, s. 140. Commissioner's decision to be upon the merits.

141. Where the Commissioner deems the matter or proceeding vexatious, or where it is brought by a person residing out of Ontario, he may order that such security for costs as he may deem proper be given, and that in default of such security being given within the time limited or in default of speedy prosecution the matter or proceeding be dismissed. 8 Edw. VII. c. 21, s. 141. Security for costs.

142. Where the hearing is to take place at a place where a court house is situate, the Commissioner shall have the right to use the court room, and where the hearing is to take place in a municipality in which there is a hall belonging to the municipality but no court room, he shall have the right to use such hall. 8 Edw. VII. c. 21, s. 142. Right to use court room.
Right to use town hall.

Sheriffs, etc.,
to assist com-
missioner.

143. Sheriffs, deputy sheriffs, constables and other peace officers shall aid, assist and obey the Commissioner in the exercise of the powers conferred on him by this Act, whenever required so to do, and shall upon the certificate of the Commissioner be paid by the Treasurer of the County or District the same fees as for similar services in carrying out the orders of a Judge of the High Court Division. 8 Edw. VII. c. 21, s. 143.

When notes
need not be
extended.

144. The evidence taken before the Commissioner need not be filed, or written out at length by the shorthand writer unless required by the Commissioner or by a party to the proceedings, and copies shall be furnished upon the same terms as in cases in the High Court Division. 8 Edw. VII. c. 21, s. 144.

COSTS AND WITNESS FEES.

Costs.

145. The Commissioner may in his discretion award costs to any party, and may direct that such costs be taxed by the Clerk of the County or District Court or by a local taxing officer or by one of the taxing officers at Toronto, or may order that a lump sum be paid in lieu of taxed costs. 8 Edw. VII. c. 21, s. 145.

Scale of costs.

146.—(1) The costs and disbursements payable upon proceedings before the Commissioner, as to any matter in which the amount or value of the property in question does not in the opinion of the Commissioner exceed \$400, shall be according to the tariff of the County Court, and as to any matter in which the amount or value of the property in question in his opinion exceeds \$400, shall be according to the tariff of the Supreme Court.

Commissioner
to decide as to
scale.

(2) The Commissioner shall in his order or award direct according to which tariff the costs and disbursements shall be taxed.

Council fees.

(3) The Commissioner shall have the same powers as a Judge of a County Court or a taxing officer of the Supreme Court with respect to counsel fees. 8 Edw. VII. c. 21, s. 146.

Witness fees
and conduct
money.

147. The fees and conduct money to be paid to a witness before the Commissioner or Recorder shall be according to the County Court scale. 8 Edw. VII. c. 21, s. 147.

DECISIONS.

Decision to be
in form of order
or award.

148.—(1) Except where inapplicable, the decision of the Commissioner shall be in the form of an order or award, but need not show upon its face that any proceeding or notice was had or given, or that any circumstance existed necessary to give jurisdiction to make such order or award.

(2) The order or award of the Commissioner, with the evidence, exhibits, the statement, if any, of view or of special knowledge or skill and the reasons for his decision if any are given, shall be filed in the Bureau of Mines, or in the Office of the Recorder, as may be directed by the Commissioner, and the officer or person in charge of such office shall forthwith give notice in writing of the filing by registered post or otherwise to the solicitors of the parties appearing by solicitor and to the parties not represented by a solicitor. Filing order or award.

(3) Where the order or award is not filed with the Recorder of the Division in which the property affected is situate the Commissioner shall transmit a duplicate to such Recorder. Duplicate to be transmitted to Recorder.
8 Edw. VII. c. 21, s. 148.

149.—(1) The Commissioner shall make in the books of his office a full note of every decision given by him. Entry of note of decision.

(2) Where a decision of the Commissioner finally disposes of the matter in question so far as he is concerned he shall give notice of the purport of such decision to the parties to the proceeding by registered letter addressed to them at their addresses as entered in his books. 8 Edw. VII. c. 21, s. 149. Notice of final decision to be given to parties.

150. Any party to a proceeding shall be entitled on payment of the prescribed fee to a certified copy of any order or award made by the Commissioner, and the copy shall show the date of the entry of the order or award in the books of the Commissioner. 8 Edw. VII. c. 21, s. 150. Parties to be entitled to certified copy of order or award.

APPEALS FROM COMMISSIONER.

151. Where not herein otherwise provided, an appeal shall lie to a Divisional Court from every decision of the Commissioner, including an order dismissing a matter or proceeding under the provisions of section 141. 8 Edw. VII. c. 21, s. 151, *part*. Appeal to Divisional Court.

152.—(1) Except in the case provided for by section 128, and in the case of a reference under *The Arbitration Act*, the order or award of the Commissioner shall be final and conclusive unless where an appeal lies it is appealed from within fifteen days after the filing thereof or within such further period not exceeding fifteen days as the Commissioner or a Judge of the Supreme Court may allow. Time for appealing.

(2) The appeal shall be begun by filing a notice of appeal with the Recorder of the division in which the property in question or a part of it is situate and paying to him the prescribed fee, and unless such filing and payment are so made, and unless the appeal is set down and a certificate of such setting down lodged with the Recorder within five days after the expiration of said fifteen days or the further time allowed under subsection 2 the appeal shall be deemed to be abandoned. Notice of appeal.

Recorder to
transmit pro-
ceedings to
Central Office.

(3) The Recorder shall forthwith after the filing of the notice of appeal and the payment of the prescribed fee, transmit by registered post or by express to the Central Office at Osgoode Hall, Toronto, the order or award and all the exhibits, papers and documents filed therewith.

Order extend-
ing time for
appeal to be
sent to
Recorder.

(4) Where the time for appealing is extended the appellant shall forthwith transmit the order for the extension, or a duplicate thereof, by registered post to the Recorder. 8 Edw. VII. c. 21, s. 151, *part*.

PROCEDURE ON APPEALS.

Procedure on
appeals.

153. The practice and procedure, including the disposition of costs, on an appeal shall be the same as in ordinary cases under *The Judicature Act*. 8 Edw. VII. c. 21, s. 153.

VALIDITY OF PROCEEDINGS BEFORE COMMISSIONER OR RECORDER.

Proceedings
under Act not
removable by
certiorari, etc.

154. Proceedings under this Act shall not be removeable into any Court by certiorari or otherwise, and no injunction, mandamus or prohibition shall be granted or issued out of any Court in respect of anything required or permitted to be done by any officer appointed under the authority of this Act. 8 Edw. VII. c. 21, s. 154.

Validity of pro-
ceedings not to
be affected by
informality.

155. No proceeding before the Commissioner or a Recorder shall be invalidated by reason of any defect in form or substance or failure to comply with the provisions of this Act, where in the opinion of the Court before which any such proceeding comes in question no substantial wrong or injustice has been thereby done or occasioned. 8 Edw. VII. c. 21, s. 155.

POWER TO EXTEND TIME AFTER EXPIRATION OF PRESCRIBED TIME.

Expiration of
time for doing
any act.

156. Where power is conferred by this Act to extend the time for doing an act or taking a proceeding unless otherwise expressly provided, the power may be exercised as well after as before the expiration of the time allowed or prescribed for doing the act or taking the proceeding 8 Edw. VII. c. 21, s. 156.

PART IX.—OPERATION OF MINES.

REGULATIONS.

Restrictions
on employ-
ment of
children.

157. No boy or girl under the age of fourteen years shall be employed in or about any mine, and no boy under the age of seventeen years shall be employed below ground in any mine. 2 Geo. V. c. 8, s. 17.

158. Except as stenographer, book-keeper or in some Girls and similar capacity, no girl or woman shall be employed at women. mining work, or allowed to be for the purpose of employment at mining work, in or about any mine. 2 Geo. V. c. 8, s. 17.

159.—(1) No workman shall remain or be allowed to remain underground in any mine for more than eight hours ^{Hours of labour underground.} in any consecutive twenty-four hours, which eight hours shall be reckoned from the time he arrives at his place of work in the mine until the time he leaves such place, provided, how- Proviso. ever, that

(a) A Saturday shift may work longer hours for the purpose of avoiding work on Sunday or changing shift at the end of the week or giving any of the men a part holiday;

(b) The said limit of time shall not apply to a shift boss, pump man, cage-tender, or any person engaged solely in surveying or measuring, nor shall it apply in cases of emergency where life or property is in imminent danger, or in any case of repair work, or to any mine where the number of men working in a shift does not exceed six.

(2) In this section

Interpreta-
tion.

“Workman” means any person employed underground “Workman.” in a mine who is not the owner or agent or an official of the mine.

“Shift” means any body of workmen whose hours for “Shift.” beginning and terminating work in the mine are the same or approximately the same.

(3) Where any question or dispute arises as to the mean- Certificate ing or application of clause (b) of subsection 1, or as to of In- the meaning of “workman,” “shift,” or “underground,” spector. the certificate of the Inspector shall be conclusive.

(4) For greater certainty it is hereby declared that sec- Application tions 174, 175, 179, 180 and 181 of this Act shall apply to of sections as contraventions of this section; provided, however, that a to penalties. workman shall not be guilty of an offence for failure to return to the surface within the time limited by this section if he proves that without fault on his part he was prevented from returning owing to means not being available for the purpose.

(5) In the event of great emergency or grave economic dis- Suspension turbance, the Lieutenant-Governor in Council may suspend of operation the operation of this section to such extent and for such period the section. as he deems fit; or upon the Inspector certifying as regards any iron mine that the precautions, safeguards and arrangements for protecting the health, safety and comfort of the

workmen employed therein are satisfactory and in compliance with this Act, the Lieutenant-Governor in Council may, upon the recommendation of the Minister, in like manner suspend the operation of this section in so far as such mine is concerned.

Commence-
ment.

(6) This section shall come into effect on the first day of January, 1914, in all those parts of the Province without county organization, and in the remaining parts of the Province at such time as may be named by the Lieutenant-Governor by his proclamation. 3-4 Geo. V. c. 10, s. 1.

Hoisting for
shafts.

160.—(1). No person under the age of twenty years shall be allowed to have charge of any hoisting engine by means of which persons are hoisted, lowered or hauled in a shaft, incline or level at any mine.

Other
hoists.

(2) No person under the age of eighteen years shall be allowed to have charge of any hoisting engine or hoisting apparatus of any kind at a mine. 2 Geo. V. c. 8, s. 17.

Penalty for
employment of
persons con-
trary to Act.

161. Where any person contravenes any of the next preceding four sections, the owner and the agent of the mine shall also each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means to prevent such contravention by publishing, and to the best of his power enforcing the provisions of this Act. 8 Edw. VII. c. 21, s. 161.

Fencing of
abandoned or
unworked
mines.

162. Where a mine has been abandoned or the working thereof has been discontinued, the owner or lessee thereof, and every other person interested in the minerals of the mine shall cause the top of the shaft and all entrances from the surface, as well as all other pits and openings dangerous by reason of their depth, to be and to be kept securely fenced; and if any person fails to act in conformity with this section he shall be guilty of an offence against this Act, and any shaft, entrance, pit or other opening which is not so fenced shall be deemed to be a nuisance. 8 Edw. VII. c. 21, s. 162.

INQUEST TO BE HELD IN CASE OF FATALITY.

Coroner to hold
inquest in case
of fatality in a
mine.

163.—(1) The coroner who resides nearest to a mine wherein or in connection wherewith any fatal accident has occurred, shall forthwith conduct an inquest, but if he is in any way in the employment of the owner or lessee of the mine he shall be ineligible to act as coroner, and any other coroner shall, upon application by any person interested, forthwith issue his warrant and conduct such inquest, and this section shall be his authority for so doing whether his commission extends to such territory or not. 8 Edw. VII. c. 21, s. 163.

Right of the
Inspector or his
representative
to be present
at inquest.

(2) The Inspector and any person authorized to act on his behalf shall be entitled to be present and to examine or cross examine any witness at every inquest held concerning

a death caused by an accident at a mine, and if the Inspector or some one on his behalf is not present, the coroner shall, before proceeding with the evidence, adjourn the inquest and give the Deputy Minister not less than four days' notice of the time and place at which the evidence is to be taken.
9 Edw. VII. c. 17, s. 1.

RULES FOR PROTECTION OF MINERS.

164. The following rules shall be observed and carried out at every mine, except in so far as the Inspector may deem the same not reasonably practicable: Rules for operating mines.

Sanitation.

1. An adequate amount of ventilation shall be constantly produced so that the shafts, adits, tunnels, winzes, raises, sumps, levels, stopes, cross-cuts, underground stables and working places of the mine and the travelling roads to and from such working places shall be in a fit state for working and passing therein. Ventilation.

2. In every working mine which is entered by a shaft and operated to a greater depth than 100 feet, and in every mine which is entered by an adit or tunnel and operated to a greater distance than 300 feet from the entrance to the adit or tunnel, the Inspector may require a sufficient number of portable watertight privies to be provided for the underground employees of the mine, and such privies shall be taken to the surface and thoroughly cleansed every twenty-four hours. Portable privies.

Care of Explosives.

3. No magazine for explosives shall be erected or maintained nearer than four hundred feet from the mine and works, or any public highway, except with the written permission of the Inspector, and every such magazine shall be constructed of materials and in a manner to insure safety against explosion from any cause, and shall be either so situated as to interpose a hill or rise of ground higher than the magazine between it and the mine and works, or an artificial mound of earth as high as the magazine and situate not more than 30 feet from it shall be so interposed. Magazine for explosives.

4. Cases containing explosives shall not be opened in the magazine, and only implements of wood, brass or copper shall be used in opening the cases. Cases for explosives.

5. In sinking shafts or winzes all firing shall be done by means of electric current; but this shall not apply to claims not patented or leased. When firing to be by electric current.

6. Explosives stored underground in a working mine shall be kept in securely covered and locked boxes, and, where thawed underground, shall be kept in an unused part of the mine, never less than ten feet from lines of underground Where explosives are stored in mines.

traffic nor less than one hundred and fifty feet from places where drilling and blasting are carried on, and shall at all times be in charge of a specified man fully qualified by his experience to take charge thereof.

Amount of supply.

7. No explosives in excess of a supply for twenty-four hours shall be stored underground in a working mine.

Storage of fuse, blasting caps, etc.

8. Fuses, blasting-caps and electric detonators shall be kept in a place of safety and shall not, nor shall any article containing iron or steel, be kept or stored in the same magazine or thawing-house with explosives or nearer than 50 feet therefrom.

Lighted lamps or candles to be kept at a distance from explosives.

9. Whenever a workman opens a box containing explosives, or in any manner handles the same, he shall not permit any lighted lamp or candle to come closer than five feet to such explosives, and a workman with a lighted lamp, candle, pipe or any other thing containing fire shall not approach nearer than five feet to an open box containing an explosive.

Inspection of stores of explosives in a mine.

10. The manager, captain or other officer in charge of a mine shall make a thorough daily inspection of the condition of the explosives in or about the same, and shall make an immediate investigation when an act of careless placing or handling of explosives is discovered by or reported to him;

Offence to be reported to the Inspector or Crown Attorney.

(a) Any employee who commits a careless act with an explosive or where explosives are stored, or who, having discovered it, omits or neglects to report immediately such act to an officer in charge of the mine, shall be guilty of an offence against this Act, and the officer in charge of the mine shall immediately report such offence to the Inspector or to the Crown Attorney of the County or District in which the mine is situate.

Thawing house and apparatus for explosives.

11. A suitable house in which to thaw explosives shall be built separate from the other mine buildings and shall be equipped with suitable apparatus for thawing explosives approved by the Inspector, and shall be under the direction of the mine foreman or some other careful and experienced workman. Whenever deemed necessary by the Inspector, suitable apparatus for thawing explosives shall also be provided for use in the mine and shall be used only under the direction of the mine foreman or some other careful and experienced workman. The quantity of explosives brought into the thawing house shall not at any time exceed the requirements of the mine for a period of twenty-four hours, except where such requirements would be less than one hundred pounds.

Recording thermometer in thawing room.

12. A reliable recording thermometer shall be kept in the room in which explosives are thawed and the record thereof kept.

13. In charging holes for blasting, no iron or steel tool or rod shall be used, and no iron or steel shall be used in any hole containing explosives, and no drilling shall be done in any hole that has been blasted, nor shall any iron or steel tool be introduced into the bottom of any such hole.

14. When a miner fires a round of holes he shall count the number of shots exploding, except in case of instantaneous blasting by electricity. If there are any reports missing he shall report the same to the mine captain or shift boss. If a missed hole has not been fired at the end of a shift, that fact, together with the position of the hole shall be reported by the mine captain or shift boss to the mine captain or shift boss in charge of the next relay of miners, before work is commenced by them.

15. A charge which has missed fire shall not be withdrawn, but shall be blasted, and no drilling shall be done in the working place where there is a missed hole or a cut-off hole containing explosive until it has been blasted.

16. All drill holes, whether sunk by hand or machine drills, shall be of sufficient size to admit of the free insertion to the bottom of the hole of a stick or cartridge of powder, dynamite or other explosive, without ramming, pounding or pressure.

17. No explosives shall be used to blast or break up ore, salamander or other material where by reason of its heated condition there is any danger or risk of premature explosion of the charge.

18. No explosive shall be used at any mine, unless there is plainly printed or marked on every original package containing such explosive the name and place of business of the manufacturer, and the strength, and the date of its manufacture.

Time of Blasting.

19. Where parties working contiguous or adjacent claims or mines disagree as to the time of setting off blasts, either party may appeal to the Inspector, who shall decide upon the time at which blasting operations thereon may be performed, and the decision of the Inspector shall be final and conclusive and shall be observed by them in future blasting operations.

Protection in Working Places.

20. On every level in which mechanical haulage is employed, there shall be at intervals of not more than one hundred yards a place of refuge, affording a space of at least three feet of width between the widest part of the car or train running on the tramway, and the farthest side of the place of refuge.

Keeping
refuges clear.

21. Every man-hole and space for a place of refuge shall be constantly kept clear, and no person shall place anything in a man-hole or in such space in a position to prevent convenient access thereto.

Protection of
workmen in
drifts.

22. Where a drift extends from a shaft in any direction on a level, a safe passage way and standing room for workmen shall be made on one or both sides of the shaft to afford protection against falling material.

Protection of
workmen from
falling cage,
etc.

23. Where a shaft is being sunk below a level from which material is being hoisted in the same shaft, a suitable covering of rock, timber, iron, steel or other metal shall be provided under the hoisting compartment of the shaft immediately below the level for the protection of the workmen in the shaft; and such covering shall be sufficiently strong to withstand the shock of the loaded bucket skip or cage falling from the highest point in the shaft.

Fencing of
shafts and
other openings.

24. The top of every shaft shall be securely fenced or protected by a gate or guard rail, and every pit or opening, dangerous by reason of its depth shall be securely fenced or otherwise protected.

Protection of
shaft and
winze openings
in levels.

25. At all shaft and winze openings on every level, a gate or guard rail, not less than three feet or more than four feet above the floor, shall be provided and kept in place except when the cage, skip or bucket is being loaded or unloaded at such level.

Timbering.

26. Where the enclosing rocks are not safe every working or pumping shaft, adit, tunnel, stope or other working in which work is being carried on, or persons passing, shall be securely cased, lined, or timbered, or otherwise made secure.

Covering
mill holes
in stope.

27. The top of every mill hole in a stope shall, as far as practicable, be kept covered.

Safety from
water.

28. Every working mine shall be provided with suitable and efficient machinery and appliances for keeping the mine free from water, the accumulation or flowing of which might injuriously affect any other mine.

Ladder-ways.

Foot ladder
or passage
in shaft to
be separated
from hoist.

29. The ladder or passage-way in a shaft or winze shall be separated by a closely boarded partition from the compartment or division of the shaft or winze in which the material is hoisted.

Ladders and
platforms.

30. A suitable footway or ladder, inclined at the most convenient angle which the space in which the ladder is fixed allows, shall be provided in every working shaft, and every such ladder shall have a substantial platform at intervals of not more than twenty feet, and shall not be fixed for permanent use in a vertical or overhanging position, and all

ladders in shafts shall project at least two feet above the platform, and all holdfasts shall be of iron, securely fixed in the shaft casing. The platform shall be closely covered, with the exception of an opening large enough to permit the passage of a man's body, and shall be so arranged in vertical or steeply inclined shafts and winzes, that it would not be possible for a person to fall from one ladder through the opening to the ladder below.

Raising or Lowering Persons.

31. No person shall be lowered or hoisted, or allow himself to be lowered or hoisted, in a shaft, winze or other underground opening of a mine, When persons, not to be hoisted.

- (a) In a bucket or skip, except that men employed in shaft sinking shall be allowed to ascend and descend to and from the nearest level or other place of safety by means of the bucket or skip used for hoisting material, but there shall always be a suitable ladder in the shaft to provide an auxiliary means of escape. In buckets or skips.
- (b) In a cage or skip, except as provided in clause (a), which is not provided with a hood, dogs and other safety appliances approved by the Inspector; When safety appliances not used.
- (c) In a cage or skip where a detaching hook or other device approved by the Inspector to prevent overwinding in mines of upwards of 1,000 feet vertically in depth are not provided; When detaching hooks not used.
- (d) Where no indications other than marks on the rope or cable are used to show to the person who works the machine or hoisting engine the position of the cage in the shaft; Where proper indicators not used.
- (e) Where the rope or cable passes through blocks instead of passing over a sheave of a diameter suited to the diameter of the rope or cable and properly mounted on a secure head-frame. Where cable does not pass through proper sheave.

The owner of every mine shall post and maintain at the mouth of the shaft or other conspicuous place a printed copy of this rule, and where the same has been posted and maintained in case of an accident occurring as a result of a violation of this rule the owner shall not be liable for damages except upon proof that he has permitted or authorized the employment of means herein prohibited for raising and lowering workmen in a mine, or that a suitable manway has not been provided. Printed copy of rule to be kept posted.

32. Whenever a mine shaft exceeds four hundred feet in vertical depth, a safety cage shall be provided, kept and used for lowering and raising men in the shaft, unless otherwise directed in writing by the Inspector. Safety cages in shafts over 400 feet deep.

Shaft Equipment, Etc.

Crossheads to be provided with safety appliance.

33. All cross heads must be provided with a safety appliance so constructed that the cross heads cannot stick in the shaft without also stopping the bucket.

Skipways.

34. Skipways shall be provided with back timbers to prevent skips leaving the track where such skipways are inclined at more than 60 degrees from the horizon, unless otherwise directed in writing by the Inspector.

Hoisting with horse and pulley-block.
Open hooks not to be used.
Slipping of rope on drum.

35. Hoisting with horse and pulley-block is forbidden where the depth of a shaft is more than seventy-five feet.

36. No open hook shall be used in hoisting or lowering.

37. On the drum of every machine used for lowering or raising persons there shall be such flanges or horns, and also, if the drum is conical, such other appliances as may be sufficient to prevent the rope or cable from slipping.

Brake.

38. To every hoisting machine used for lowering or raising persons or materials there shall be attached a brake adequate to hold at any point in the shaft the weight of the skip, bucket or other vessel used when filled with ore, and in any shaft of greater depth than two hundred feet there shall also be in addition to any mark on the rope or cable a geared indicator which will show to the person who works the machine the position of the cage or load in the shaft.

Riding on loaded cars, etc.

39. No person shall ride upon or against any loaded car in any level, drift or tunnel in or about any mine.

Scaling, Escapement Shafts, Etc.

Daily examination.

40. The manager or captain or other competent officer of every mine shall examine at least once every day all working shafts, levels, stopes, tunnels, drifts, crosscuts, raises, signal apparatus, pulleys and timbering in order to ascertain that they are in a safe and efficient working condition, and he shall inspect and scale, or cause to be inspected and scaled, the walls and roofs of all stopes or other working places at least once every week, and shall enter the record of such scaling operations in a book kept for that purpose in the mine office.

Record to be kept of all scaling operations.

Escapement shafts.

41. Every person who has sunk in any mine a vertical or inclined shaft to a greater depth than 100 feet, and who has drifted a distance of 200 feet or more from the shaft and has commenced to stope, shall provide and maintain, in addition to the hoisting shaft or the opening through which men are let into or out of the mine and the ore is extracted, a separate escapement shaft or opening. Such auxiliary exit shall not be less than 50 feet from the main hoisting shaft and shall not be covered by any inflammable structure.

If such an escapement shaft or opening is not in existence at the time that stoping is commenced, work upon it shall be begun as soon as stoping is commenced, and shall be diligently prosecuted until the same is completed, and the escapement shaft or opening shall be continued to and connected with the lowest workings in the mine. The escapement shaft or opening shall be of sufficient size to afford an easy passage way, and shall be provided with good and substantial ladders from the deepest workings to the surface. With the exception of any erection used solely as a shaft-house, no permanent building, for any purpose, shall be erected within fifty feet of the mouth of a mine, unless there is such an auxiliary exit. No boiler shall be installed in any building within fifty feet of the mouth of any shaft.

Buildings not to be erected nearer than 50 feet to the mouth of a mine.

Provided that where the timber and wood in the hoisting shaft of a mine are constantly wet, and in the opinion of the Inspector it is not necessary for the safety of the workmen that the escapement shaft or opening be continued to and connected with the lowest workings, he may in writing so certify, and thereupon such requirement shall not apply to such mine, but the Inspector may require any other precautions to be taken which he may deem necessary.

Proviso.

42. All timber not in use to sustain the roof or walls or any part of a mine shall as soon as practicable be taken from the mine and shall not be piled up and permitted to decay therein.

Old timber to be removed.

43. All oils and other inflammable materials shall be stored or kept in a building erected for that purpose, and at a safe distance from the powder magazine, and from the main buildings, and shall be removed therefrom for use in such quantities only as are necessary to meet the requirements of one day.

Storing oils, etc.

Signals.

44. Every working shaft which exceeds 50 feet in depth, unless otherwise permitted in writing by the Inspector, shall be provided with some suitable means of communicating by distinct and definite signals from the bottom of the shaft and from every level for the time being in work between the surface and the bottom of the shaft, to the hoist room.

Signalling.

45. All methods of signalling in a mine shall be printed and posted up in the engine house or hoist house and also at the top of the shaft and at the entrance of each level.

Code of signals.

The following code of mine signals shall be used at every mine:—

Code of Mine Signals.

- 1 bell Stop immediately—if in motion.
- 1 bell Hoist.

2 bells Lower.

3 bells Men about to ascend or descend.

The 3-bell signal must be given before men enter cage, which must not be moved until the "Hoist" or "Lower" signal is given and then slowly.

4 bells Blasting signal. Engineer must answer by raising bucket, skip or cage, a few feet and letting it back slowly, then one bell, hoist men away from blast.

9 bells Danger signal in case of fire or other danger. Then ring number of station where danger exists.

Special signals in addition to the above may be used at any mine, if they have been approved by the Inspector.

Who may
use signals.

46. No person but the cage tender shall ring the signal bell, and the signal to move the cage, skip or bucket shall be given only when the same is at the level from which the signal is to be given.

Protection from Machinery.

Railing or
casing when
required.

47. Every fly-wheel, geared-wheel, bull-wheel, pulley or belt, and every opening through which any wheel or belt operates shall be enclosed with a substantial railing or casing.

Uneven pro-
jections to
be covered.

48. Every key, bolt, set-screw, and every part of any wheel or other revolving machinery which projects unevenly from the surface shall be covered.

Runways,
etc., used
for oiling
to have
hand rail.

49. Every runway, stair and staging used for oiling or other purposes more than five feet from the floor shall be provided with hand-railing.

Protection
of entrances.

50. Every entrance to any elevator, hatchway or well-hole shall be provided with a suitable trap-door, guard-rail, or automatically closing gate.

Wearing
loose
clothing.

51. Persons engaged in dangerous proximity to moving machinery shall not wear or be allowed to wear loose outer clothing.

Frogs in
tracks.

52. Every frog in a track, either above or below ground, on which cars are moved by mechanical power shall have a guard block of wood or iron.

Gongs, etc.,
on hauling
engines.

53. Every locomotive engine, trolley or motor car used for hauling material, either above or below ground shall be equipped with a gong, bell or whistle, which shall be sounded when starting and at such other times as warning of danger may be required.

Steam
boilers.

54.—(1) Every steam boiler used for generating steam in or about a mine shall, whether separate or one of a range—

- (a) Have attached to it a proper safety-valve, and ^{Safety valves.} also a proper steam-gauge and water-gauge, to show respectively the pressure of steam and the height of water in each boiler;
 - (b) Be inspected by a competent person, not an em-^{Inspection.}ployee of the owner or agent, at least once in every twelve months; and a certified copy of the report of the Inspector shall be forwarded to the Inspector within seven days;
 - (c) Be cleaned out and examined internally, as far as ^{Cleaning.}the construction of the boiler will permit, by the person in charge of it, at least once in every three months.
- (2) Every such boiler, safety-valve, steam-gauge and ^{Maintenance.}water-gauge shall be maintained in proper working condition.

Dressing Rooms.

55. If more than ten persons to each shift are ordinarily ^{Dressing room}employed in the mine below ground, sufficient accommodation, including supplies of pure cold and warm water for washing shall be provided above ground near the principal entrance of the mine, and not in the engine room or boiler room, for enabling the persons employed in the mine to conveniently dry and change their clothes.

Aid to Injured.

56. At every mine where six or more men are employed in underground work, a properly constructed stretcher shall be ^{Stretchers for conveyance of injured persons.}kept for the purpose of conveying to his place of abode any person who may be injured while in the discharge of his duties at the mine.

57. A supply of articles suitable for first aid shall be kept ^{Supplies for first aid.}accessible at every mine for the treatment of anyone injured, including the following:—antiseptic gauze, carbolated vaseline, sponges, soap, carbolic acid, tablets of bichloride of mercury, linseed oil, bandages, towels and a wash basin.

58. At every mine or works where poisonous or dangerous compounds, solutions or gases are used or produced there ^{Antidotes and washes.}shall be kept in a conspicuous place as near the same as practicable, a sufficient supply of satisfactory antidotes and washes for treating injuries received from such compounds, solutions or gases. Such antidotes and washes shall be properly labelled, and explicit directions for their use affixed to the boxes containing them.

Prevention of Dust.

59. In every mill or plant where, by reason of dry crush-^{Removal of dust.}ing or otherwise, there is in the air of the building dust in

quantity to be injurious to health, suitable apparatus shall be installed for its removal.

Keeping
water supply
to lay dust.

60. Every dusty place where work is being carried on in a mine shall be adequately supplied at all times with clean water under pressure or other approved appliances for laying the dust caused by drilling or blasting operations.

Time for
blasting.

61. The times for blasting shall be so fixed that the workmen shall be exposed as little as practicable to dust and smoke.

Shields for
protection
against
burning.

62. Workmen employed at metallurgical works, shall be supplied with suitable shields and appliances to protect them as far as possible from being burned with molten material.

Use of Electricity.

Definitions.

"Pressure."

63. The word "pressure" in this and the following rules down to and including rule 95, shall mean the difference of electrical potential between any two electrical conductors.

"Low pressure system."

Where the conditions of the system are such that the pressure between any two conductors, or between any conductor and the earth, at the terminals where the electrical energy is being used does not normally exceed 250 volts, this shall be deemed a low pressure system.

"Medium pressure system."

Where the conditions of the system are such that the pressure between any two conductors, or between any conductor and the earth, at the terminals where the electrical energy is being used normally exceeds 250 volts, but does not normally exceed 600 volts, this shall be deemed a medium pressure system.

"High pressure system."

Where the conditions of the system are such that the pressure between any two conductors, or between any conductor and the earth, at the terminals where the electrical energy is being used normally, exceeds 600 volts, this shall be deemed a high pressure system.

Construction of Apparatus.

Requirements
as to electrical
apparatus
and conductors

64. All electrical apparatus and conductors shall be sufficient in size and power for the work they may be called upon to do, and, so far as is reasonably practicable, efficiently covered or safeguarded and so installed, worked and maintained as to reduce the danger to person or property through accidental shock or fire to the minimum, and shall be of such construction, and so worked that the rise in temperature, caused by ordinary working, will not injure the insulating materials.

65. A transformer for transforming a high pressure to a medium or low pressure shall be placed in a separate fire-proof compartment, used only for that purpose. Transformers in separate buildings.

66. A higher pressure than a medium pressure shall not be used for portable motors nor for any other purpose underground. Higher than medium pressure when prohibited.

67. Electric energy shall not be used directly to thaw explosives. Thawing explosives.

68. No motor outside a machine or motor room shall be operated at a pressure exceeding the limits of medium pressure. Limit of pressure on motor.

69. Main and distribution switch and fuse boards must be made of incombustible insulating material, such as marble or slate, free from metallic veins, and be fixed in as dry a situation as practicable. Insulating material.

70. All electric switches, controllers, motor-starting devices or other apparatus essential to the operation of electric motors or other equipment shall be constructed in such a way that they may be safely used for the purposes for which they are intended, and shall be maintained in such condition. Safety in construction.

Insulation and Grounding.

71. Where a medium pressure supply is used for power purposes or for arc lamps in series, the wires or conductors forming the connections to the motors, transformers, arc lamps, or otherwise in connection with the supply, shall be, as far as is reasonably practicable, completely enclosed in strong armoring or metal casing efficiently grounded to earth, or they shall be fixed at such a distance apart, or in such a manner that danger from fire or shock may be reduced to a minimum. This rule shall not apply to trailing cables. Wires and conductors to be enclosed and grounded.

72. No higher pressure than a medium pressure supply shall be used other than for transmission or for motors, and the wires or conductors to the motors or transformers or otherwise in connection with the supply shall be completely enclosed in a strong armoring or metal casing efficiently connected with earth, or they shall be fixed at such a distance apart or in such a manner that danger to person or property from fire or shock shall be reduced to a minimum. When only medium pressure may be used.

73. All metallic coverings, armoring of cables, and the frames and bed-plates of generators, transformers and motors other than portable motors shall, as far as is reasonably practicable, be efficiently grounded. Metallic coverings, etc., to be grounded.

74. Overhead bare wires on the surface must be efficiently supported upon insulators and be clear of any traffic, and be provided with efficient lightning arresters. Insulators for overhead bare wires.

Cables used
in shafts.

75. All cables used in shafts for the transmission of electrical energy must be highly insulated and substantially fixed. Shaft cables not capable of sustaining their own weight shall be properly supported at intervals according to the weight of the cable.

Insulation
of low pres-
sure wires.

76. Low pressure wires for lighting or signal circuits shall either be conveyed in metallic conduits or casings, or suspended from or securely tied to porcelain or glass insulators, so that they do not touch any timbering or metal. On no account shall staples be used. If metallic conduits are used they must be grounded, and if not electrically continuous every section must be grounded. If separate uncased wires are used they shall be kept at least three inches apart and not brought together except at lamps or fittings.

Precautions
against con-
tact of elec-
tric con-
ductors.

77. All proper precautions must be taken to prevent electric, signal or telephone wires coming into contact with other electric conductors, whether insulated or not.

Switches, Fuses and Cut-Outs.

Fuses and
automatic
cut-outs.

78. Fuses and automatic cut-outs shall be so constructed as effectually to interrupt the current when a short circuit occurs, or when the current through them exceeds the normal working current by 100 per cent. Fuses shall be stamped or marked or shall have a label attached indicating the current with which they are intended to be used, or where fuse wire is used each coil in use shall be so stamped or labelled. Fuses shall only be adjusted or replaced by an authorized person.

Covering live
parts of
switches, etc.

79. All live parts of switches, fuses and cut-outs, not in machine rooms, or in compartments specially arranged for the purpose, must be covered. The covers must be of incombustible material and must be either non-conducting or of rigid metal, and, as far as practicable, clear of all internal mechanism.

Trolleys and Portable Apparatus.

Trolley wires
in under-
ground
roads.

80. In underground roads the trolley wires shall be placed as close to the side as practicable, and in a straight line, and securely supported at frequent intervals. In all roads where it is necessary for men to travel on foot, all wires, except signal wires, must be placed on the same side of the roadway and efficiently protected. Signal wires should, where practicable, be placed on the opposite side of the roadway from other wires.

Signal
wires.

Protection of
wires.

81. At all landings, turn-outs, partings or crossings, or other places where it is necessary for men to pass near the wires, a suitable protection shall be placed around the wires, or the pressure must be cut off when such places are used for travelling on foot. Sufficient illumination to make the wires

Illumination.

plainly visible shall be provided at all points where men are liable to come in contact with power wires.

82. Every branch trolley shall be fitted with an automatic trolley switch or section insulator and line switch, or some other device that will allow the pressure to be cut off from such trolley when not actually in use. Danger signals, consisting of no fewer than two red lights in parallel, and as many in series as may be necessary, shall be connected at suitable intervals to all branch trolley circuits to indicate when the current is on. A notice shall be posted at the entrance to all roadways carrying exposed power wires, warning persons against the dangers of carelessly carrying metal tools such as drills, picks, etc., which may come in contact with the wires.

83. On roads above ground the trolley wires shall be at least 8 feet above the rail level and efficiently guarded.

84. A trailing cable shall be especially flexible, heavily insulated and protected with extra stout braiding or other equally effective covering, and in the event of its breaking down or being damaged, or of its inflicting a shock upon any person, it shall at once be put out of service, and shall not be used again until it has been repaired and tested by the mine electrician.

85. The person in charge of an electric drilling machine shall not leave the machine while it is working, and shall see that the pressure is cut off from the trailing cables before leaving the working place.

Supervision and Working of Apparatus.

86. A competent person shall be in charge of the electrical apparatus or machinery when it is in use at the mine, and at such time as the amount of electrical energy delivered down the mine exceeds 150 kilowatts, a competent person shall also be in charge below ground. Every person operating or having charge of any electric apparatus shall have been instructed in his duty and be competent for the work that he is set to do.

87. No person shall wilfully damage, interfere with or without proper authority remove or render useless any electric line, or any machine, apparatus or part thereof used in connection with the supply or use of electricity.

88. No person, other than a person authorized by the owner, manager or superintendent, shall enter a machine transformer or motor room or interfere with the working of any machine, transformer, motor or apparatus connected therewith, and when the authorized person is not present the door of such room shall be kept securely locked.

Marking high pressure appliances.

89. The machines, apparatus and lines shall be so marked as to clearly indicate that they are high pressure.

Fire buckets of sand to be kept.

90. A sufficient number of fire buckets filled with clean, dry sand shall be kept in electrical machine rooms ready for immediate use in extinguishing fires.

Repairs, etc., when current is on.

91. No repair or cleaning of live parts of any electrical apparatus or work in dangerous proximity thereto, except mere wiping or oiling, shall be done when the current is on.

India rubber gloves, mats or shoes to be used.

92. Gloves, mats or shoes of India rubber or other insulating material, shall be supplied and used where the live parts of switches, machines or other apparatus working at a pressure exceeding the limits of low pressure have to be handled for the purpose of adjustment.

Shot Firing.

Using electricity for firing shots.

93.—(a) Electricity from lighting or power cables shall not be used for firing shots, except when a special firing plug, button or switch is provided, which plug, button or switch shall be placed in a fixed locked box, and shall only be accessible to the authorized shot firer.

Connection and disconnection.

(b) The firing cables or wires shall not be connected to this box until immediately before they are required for the firing of shots, and shall be disconnected immediately after the shots are fired.

Precautions in using shot-firing cables.

94. When shot-firing cables or wires are used in the vicinity of power or lighting cables, sufficient precautions shall be taken to prevent the shot-firing cables or wires coming in contact with the lighting or power cables.

Exemptions.

Continuing use of certain appliances.

95. Notwithstanding anything contained in these rules, any electrical plant or apparatus installed or in use, on or before the twenty-fourth day of March, 1911, may be continued in use, unless the inspector shall otherwise direct.

Damage to Property.

Wilful damage.

96. No person shall wilfully damage, or without proper authority remove or render useless, any fencing, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn brake, indicator, ladder, platform, steam-gauge, water-gauge, safety-valve, or other appliance or thing provided in any mine in compliance with this Act.

General.

Persons under the influence of or carrying liquor.

97. No person under the influence of or carrying intoxicating liquor shall enter any mine or be in the proximity of any working place on the surface or near any machinery in motion.

98. There shall always be enforced and observed by the owner and the agent of a mine, and by every manager, superintendent, contractor, captain, foreman, workman and other person engaged in or about the mine, such care and precaution for the avoidance of accident or injury to any person in or about the mine as the particular circumstances of the case require; and the machinery, plant, appliances and equipment and the manner of carrying on operations shall always, and according to the particular circumstances of the case, conform to the strictest considerations of safety.

General duty
as to using
care.

Posting up Rules.

99. Instructions and rules required by this Act to be posted in or about a mine, shall be written or printed in the English language and also in such other language as may be necessary to inform any considerable number of workmen employed at the mine, and the owner or agent of the mine shall maintain such instructions and rules, duly posted, and the removal or destruction of them shall be an offence against this Act. 2 Geo. V. c. 8, s. 18.

Instructions
and rules to
be posted.

PAYMENT OF WAGES.

165.—(1) No wages shall be paid to any person employed in or about any mine to which this Part applies at or within any tavern, shop or place where spirits, wine, beer or other spirituous or fermented liquor are sold or kept for sale, or within any office, garden, or place belonging or contiguous thereto or occupied therewith.

Prohibition of
payment of
wages at public
houses.

(2) Every person who contravenes or permits any person to contravene this section shall be guilty of an offence against this Act, and in the event of any such contravention by any person whomsoever the owner and agent of the mine in respect of which the wages were paid shall also each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means to prevent such contravention by publishing and to the best of his power enforcing the provisions of this section. 8 Edw. VII. c. 21, s. 165.

Penalty.

DAMAGE TO OTHER CLAIMS.

166. In mining operations no person shall without right or authority, cause damage or injury to the holder of any mining property by throwing earth, clay, stones or mining material on such other mining property, or by causing or by allowing water which may be pumped or bailed or which may flow from a mining claim or other mining property of such person, to flow into or upon such other mining property, and the offender in addition to any civil liability shall incur a penalty of not more than \$10 for every day such damage or injury continues, and in default of payment of the penalty

Licenses not
to damage
other claims.

and costs, may be imprisoned for any period not exceeding one month. 8 Edw. VII. c. 21, s. 166; 2 Geo. V. c. 8, s. 19.

PARTY WALL.

Party walls
thickness of.

167.—(1) Unless the owners agree to dispense therewith, in all mining operations there shall be left between all adjoining properties a party wall at least fifteen feet thick, (being seven and one-half feet on each property) to the use of which the adjoining owners shall be entitled in common.

Use in
common.

(2) The owners shall be entitled to use such party wall in common as roadway for all purposes, and such roadway shall not be obstructed by the throwing of soil, rock or other material thereon, or in any other way, and any person obstructing the same in addition to any civil liability shall incur a penalty of not more than \$10 for every day such obstruction continues.

Dispensing
with.

(3) Any such adjoining owners may in any case apply to the Commissioner, who may make an order dispensing with such party wall or roadway, or providing for the working of any material therein, or otherwise, as he may deem just. 8 Edw. VII. c. 21, s. 167.

Accidents
causing

168.—(1) Where, in or about any mine, whether above or below ground, any accident occurs which causes

Death or

(a) Loss of life to any person employed in or about the mine; or

Serious
injury.

(b) Fracture or dislocation of any of the bones of the body, or any other serious personal injury, to any person employed in or about the mine.

To be re-
ported to
Deputy
Minister.

The owner, agent, manager or superintendent of the mine shall within twenty-four hours next after the accident, send notice in writing of the accident, and of the loss of life or personal injury occasioned thereby, to the Deputy Minister, in such form and accompanied by such particulars as may be prescribed by him.

"Serious
personal
injury,"
meaning of.

"Serious personal injury" shall mean such an injury as in the opinion of the attending physician may result in the injured person being incapacitated for work for at least seven days.

Accidents.

(2) Where in or about any mine,

Overwinding.

(a) Any case of overwinding a skip or cage;

Breakage
in cables.

(b) Any breakage of a rope or cable used for hoisting;

Inrush of
water.

(c) Any inrush of water from old workings or otherwise;

Fire below
ground.
Explosions.

(d) Any outbreak of fire below ground; or

(e) Any premature or unexpected explosion occurs.

Whether or not loss of life or personal injury is caused thereby, the owner, agent, manager or superintendent shall within twenty-four hours next after the occurrence send notice in writing to the Inspector, and shall furnish such particulars in respect thereof as may assist the Inspector in making inquiry into the circumstances. 2 Geo. V. c. 8, s. 20.

Notice to
Inspector.

169. Where mining operations have been commenced upon any mine, claim, location or works in Ontario, or where such operations have been discontinued, or where such operations have been re-commenced after an abandonment or discontinuance for a period exceeding two months, or where any change is made in the name of a mine or in the name of the owner or agent thereof, or in the officers of any incorporated company which is the owner thereof, the owner or agent of such mine, claim, location or works shall give notice thereof to the Deputy Minister within two months after such abandonment, discontinuance, re-commencement or change, and if such notice is not given the owner or agent shall be guilty of an offence against this Act. 8 Edw. VII. c. 21, s. 169.

Notice of
changes in
connection
with the work-
ing of a mine
or in respect of
its officers.

STATISTICAL RETURNS.

170.—(1) For the purpose of their tabulation under the instructions of the Minister the owner or agent of every mine, quarry or other works to which this Act applies shall on or before the 15th day of January in every year send to the Bureau of Mines a correct return for the year which ended on the 31st day of December next preceding, showing the number of persons ordinarily employed below and above ground respectively, and distinguishing the different classes and ages of the persons so employed whose hours of labour are regulated by this Act, the average rate of wages of each class and the total amount of wages paid during the year, the quantity in standard weight of the mineral dressed, and of the undressed mineral which has been sold, treated or used during such year, and the value or estimated value thereof, and such other particulars as the Minister may by regulation prescribe.

Statistical
returns by
owners and
agents of
mines.

(2) The owner or agent of every metalliferous mine shall, if required, make a similar return for the month or quarter at the end of each month or quarter of the calendar year.

Monthly or
quarterly
returns.

(3) Every owner or agent of a mine, quarry or other works who fails to comply with this section, or makes any return which is to his knowledge false in any particular, shall be guilty of an offence against this Act. 8 Edw. VII. c. 21, s. 170.

Penalty.

PLANS OF WORKING.

171. —(1) On any examination or inspection of a mine the owner shall, if required, produce to the Inspector, or to

Plans to be
produced on
inspection of
mine.

any other person authorized by the Minister or Deputy Minister an accurate plan of the workings of the same.

Marking subsequent progress on plan.

(2) The plan shall show the workings of the mine up to within six months of the time of the examination or inspection, and the owner shall, if required by the Inspector or other authorized person, cause to be marked on the plan the progress of the workings of the mine up to the time of the examination or inspection, and shall also permit him to take a copy or tracing thereof.

Plan of working mines to be filed.

(3) An accurate plan of every working mine in which levels, crosscuts or other openings have been driven from any shaft, adit or tunnel, and of every mine consisting of a tunnel or shaft fifty feet or more in length shall be made and a certified copy filed in the Bureau of Mines on or before the 31st day of January in each year, showing the workings of the mine up to and including the 31st day of December next preceding, and whenever work has been discontinued or abandoned for a period of one month such plan shall be filed within two months from the date of cessation of work.

Failure to furnish plans.

(4) Failure on the part of the owner or agent of the mine to comply with any provision of this section shall be an offence against this Act.

Plans to be treated as confidential.

(5) Every such plan shall be treated as confidential information for the use of the officers of the Bureau of Mines, and shall not be exhibited nor shall any information contained therein be imparted to any person except with the written permission of the owner or agent of the mine. 8 Edw. VII. c. 21, s. 171; 2 Geo. V. c. 8, s. 22.

POWERS AND DUTIES OF INSPECTOR.

Powers of inspectors.

172.—(1) It shall be the duty of every Inspector, and he shall have power,

Inquiries as to compliance with act.

(a) To make such examination and inquiry as he may deem necessary to ascertain whether the provisions of this Act are complied with;

Inspection.

(b) To enter, inspect and examine any mine and every portion thereof at all reasonable times by day or night, but so as not to unnecessarily impede or obstruct the working of the mine;

Examination as to matters affecting health and safety of employees.

(c) To examine into and make inquiry respecting the state and condition of any mine, or any portion thereof, and the ventilation of the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine, or any mine contiguous thereto, and to give notice to the owner or agent in writing

of any particulars in which he considers such mine or any portion thereof, or any matter, thing or practice to be dangerous or defective or contrary to the provisions of this Act, and to require the same to be remedied within the time named in such notice;

(d) To order the immediate cessation of work in and the departure of all persons from any mine or portion thereof which he considers unsafe, or to allow persons to continue to work therein on such precautions being taken as he deems necessary;

Stopping work when mine unsafe.

(e) To exercise such other powers as may be necessary for ensuring the health and safety of miners and all other persons employed in or about mines, smelters, metallurgical and mining works.

General powers for protection of miners.

(2) It shall be the duty of every Inspector to make an annual report of his proceedings during the preceding year to the Deputy Minister.

Annual report.

(3) The annual report shall be laid before the Assembly.

Report to be laid before Assembly

173.—(1) The Minister may direct an Inspector to make a special report with respect to any accident in or about any mine which has caused loss of life or personal injury to any person.

Special report.

(2) In conducting the inquiry the Inspector shall have power to compel the attendance of witnesses and the production of books, documents and things, and to take evidence upon oath. 8 Edw. VII. c. 21, s. 173.

Inspectors may take evidence.

174. Noncompliance with any rule contained in section 164 or with any other provision of Part IX. shall be an offence against Part IX. of this Act, of which the owner and the agent of the mine and every manager, superintendent, captain, foreman, workman and other person engaged in or about the mine shall each be guilty. 2 Geo. V. c. 8, s. 23.

Offences against Part IX.

175. Where work in or about a mine is let to a contractor or sub-contractor, he shall comply and enforce compliance with all the rules and provisions of Part IX. and shall in any case of noncompliance therewith be guilty of an offence and punishable in like manner as if he were owner or agent. 2 Geo. V. c. 8, s. 24.

Liability of contractors and sub-contractors.

PART X.—OFFENCES, PENALTIES AND PROSECUTIONS.

176. Every person who

(a) Prospects, occupies or works any Crown lands or mining rights for minerals otherwise than in

Description of offences.

31—s.

accordance with the provisions of this Act, or 6 Edw. VII. c. 11, s. 103;

- (b) Wilfully defaces, alters, removes or disturbs any post, stake, picket, boundary line, figure, writing or other mark lawfully placed, standing or made under this Act, or
- (c) Wilfully pulls down, injures or defaces any rules, or notice posted up by the owner or agent of a mine, or
- (d) Wilfully obstructs the Commissioner or any officer appointed under this Act in the execution of his duty, or
- (e) Being the owner or agent of a mine refuses or neglects to furnish to the Commissioner or to any person appointed by him or to any officer appointed under this Act the means necessary for making an entry, inspection, examination or enquiry in relation to any mine, under the provisions of this Act other than Part IX.; or
- (f) Unlawfully marks or stakes out in whole or in part a mining claim, a quarry claim, or a placer mining claim, or an area for a working permit or boring permit, or
- (g) Wilfully acts in contravention of the provisions of this Act other than Part IX. in any particular not hereinbefore set forth, or
- (h) Wilfully contravenes any provision of this Act or any rule or regulation made thereunder for the contravention of which no other penalty is provided; or
- (i) Attempts to do any of the acts mentioned in the foregoing clauses,

Penalty. shall be guilty of an offence against this Act and shall incur a penalty not exceeding \$20 for every day upon which such offence occurs or continues. 8 Edw. VII. c. 21, s. 176.

Disobeying order or award of Commissioner.

177. Every person who wilfully neglects or refuses to obey any order or award of the Commissioner except for the payment of money, shall, in addition to any other liability, incur a penalty not exceeding \$250, and upon conviction thereof shall be liable to imprisonment for a period not exceeding six months unless such penalty and costs are sooner paid. 8 Edw. VII. c. 21, s. 177.

Use of word "Bureau" prohibited.

178.—(1) No person who

- (a) Carries on the business of mining or dealing in mines, mining claims, mining lands, or mining

rights, or the shares, stocks, or bonds of a mining company, or

(b) Acts as broker or agent in or for the disposal of any mines, mining claims, mining lands, or mining rights, or of any such shares, stock or bonds, or

(c) Offers or undertakes to examine or report on a mine, mining claim, mining land or mining rights,

shall use the word "Bureau" as the name or title or part of the name or title under which he acts or carries on business.

(2) Every person who contravenes the provisions of this section shall incur a penalty of not more than \$20 for every day upon which such offence occurs or continues. 8 Edw. VII. c. 21, s. 178.

179.—(1) Every owner, agent, manager, superintendent, or captain who is guilty of an offence against Part IX. shall incur a penalty of not less than \$100 or more than \$1,000. Liability of owner or agent offending against Part IX.

(2) Every person, other than an owner, agent, manager, superintendent or captain, engaged or employed in or about a mine who is guilty of an offence against Part IX. shall incur a penalty of not less than \$10 or more than \$100. Other person so offending.

(3) Where the Deputy Minister or an Inspector has given written notice to an owner or agent or any person engaged or employed in or about a mine that an offence has been committed against Part IX., such owner or agent or other person shall incur a further penalty not exceeding \$100 for every day upon which the offence continues after such notice. Additional penalty for continuing offence.

(4) Every such owner or agent shall upon conviction be liable to imprisonment for a period not exceeding three months unless the penalty and costs are sooner paid, and every person other than an owner or agent so employed shall upon conviction be liable to imprisonment for a period not exceeding one month unless the penalty and costs are sooner paid. 8 Edw. VII. c. 21, s. 179 (1)-(4); 9 Edw. VII. c. 17, ss. 9, 10. Imprisonment in default of payment of penalties.

(5) Where the offence is one which might have endangered the safety of those employed in or about the mine or caused serious personal injury or dangerous accident, and was committed wilfully by the personal act, default or negligence of the accused, every person who is guilty of an offence against Part IX. shall, in addition to or in substitution for any pecuniary penalty that may be imposed, be liable to imprisonment with or without hard labour for a period not exceeding three months. 9 Edw. VII. c. 17, s. 11; 2 Geo. V. c. 8, s. 25; 3-4 Geo. V. c. 18, s. 12. Imprisonment of offender against Part IX in certain cases.

Instituting
prosecutions
for offence
against Part
IX.

180.—(1) No prosecution shall be instituted for an offence against Part IX. or any regulation made in pursuance thereof except

(a) By an Inspector, or

(b) By the direction of the County or District Crown Attorney, or

(c) By the leave in writing of the Attorney-General;

For offences
against other
provisions.

or for an offence against any other of the provisions of this Act or of any rule or regulation made in pursuance thereof, except

(a) By or leave of the Commissioner or a Recorder,

(b) By leave of the Attorney-General, or

(c) By direction of the County or District Crown Attorney;

When person
not actual
offender not
liable.

No person not being the actual offender, shall be liable in respect of such offence if he proves that he did not participate in the contravention of the rule or provision for a breach of which he is charged and that he was not to blame for such breach and that according to his position and authority he took all reasonable means in his power to prevent such breach and to secure compliance with the rules and provisions of Part IX. 8 Edw. VII. c. 17, s. 11; 2 Geo. V. c. 8, s. 26.

Onus of
proof that
compliance
with rules
not practicable.

(2) The burden of showing that the observance or carrying out of any rule contained in section 164 was not deemed by the Inspector to be reasonably practicable, shall be upon the accused, but it may be proved by a certificate from the Inspector or by his evidence given at the hearing. 2 Geo. V. c. 8, s. 27.

Procedure on
prosecutions.

181.—(1) Except as to offences against section 12, every prosecution for an offence against or for the recovery of a penalty imposed by or under the authority of this Act shall take place before a Police Magistrate or a Justice of the Peace having jurisdiction in the County or District in which the offence is committed, or before the Commissioner or a Recorder, and save as herein otherwise provided, the provisions of *The Ontario Summary Convictions Act* shall apply to every such prosecution.

Rev. Stat.
c. 90.

Limitation of
prosecutions.

(2) The prosecution shall be commenced within six months after the commission of the offence. 8 Edw. VII. c. 21, s. 181.

PART XI.—GENERAL PROVISIONS.

LIEN FOR WAGES.

Registration,
etc.
Rev. Stat.
c. 140.

182. The provisions of *The Mechanics and Wage Earners Lien Act* shall apply to mines, mining claims, mining land

or works connected therewith except that in the case of unpatented land and mining rights the registration provided for by the said Act shall be in the office of the Recorder. 8 Edw. VII. c. 21, s. 182.

183.—(1) Every person who performs labour for wages in connection with any mine, mining claim, mining lands or works connected therewith shall have a lien thereon and upon any other property of the owner therein or thereon for such wages, not exceeding the wages for thirty days, or a sum equal to his wages for thirty days, and such lien may be enforced in the manner provided by section 182. 8 Edw. VII. c. 21, s. 183.

Mine workers
to have lien
for wages.

(2) Where satisfied that any claim for lien recorded under or by reason of this or the next preceding section is made or recorded improperly or for the purpose of embarrassment the Commissioner may cancel and remove the same. 2 Geo. V. c. 8, s. 21.

Cancelling
lien for
wages.

LIQUOR LICENSES.

184. Excepting in cities, towns, and villages, no license shall hereafter be issued under *The Liquor License Act* for any tavern, shop or club, not on the 14th day of May, 1906, under license for the sale of intoxicating liquor, within six miles of any mine or mining camp where six or more workmen are employed. 8 Edw. VII. c. 21, s. 184.

Liquor licenses
forbidden
within six
miles of cer-
tain mines.
Rev. Stat.
c. 215.

PRESERVATION OF PEACE.

185. The Lieutenant-Governor in Council may declare by proclamation that *The Public Works Peace Preservation Act* shall be in force in any Mining Division or in any defined locality therein, and upon and after the date named in any such proclamation section 1 and sections 3 to 11 inclusive of that Act, shall take effect within the Mining Division or locality designated in the proclamation, and the provisions of the said Act shall apply to all persons employed in any mine or in mining within the limits of such Mining Division or locality in the same manner and to the same extent as nearly as may be as if the persons so employed had been specially mentioned and referred to in such Act. 8 Edw. VII. c. 21, s. 185.

Powers of
Lieutenant-
Governor in
Council.
Rev. Stat.
c. 36.

EXPLORATORY DRILLING.

186. The Minister may, out of any money appropriated for the purpose, purchase such diamond drills as he may deem necessary for use in prospecting for ores or minerals under rules and regulations made by the Lieutenant-Governor in Council, which may provide—

Purchase of
drills for
prospecting
purposes.

- (a) For the control and working of the drills under the direction of a person employed for the purpose by the Bureau of Mines;

- (b) For the payment of freight charges where the drills are used upon mines or land other than those owned by the Crown;
- (c) As to applications for use of the drills and the method of dealing therewith;
- (d) As to charges for use of the drills and for damages thereto, or wear and tear connected therewith,

and otherwise as to the Lieutenant-Governor in Council shall seem proper. 8 Edw. VII. c. 21, s. 186.

RIGHTS AND EASEMENTS.

What rights over other lands may be conferred by Commissioner.

187.—(1) Where required for or in connection with the proper working of a mine, mill for treating ore, or quarry, the owner, lessee or holder of it or the person entitled to work the same, may, subject as hereinafter provided, obtain and have vested in him by order or award of the Commissioner made after hearing such parties interested as may appear, or on appeal from him

Constructing ditches, flumes, etc., for water.

- (a) The right to open, construct, put in, maintain and use ditches, tunnels, adits, pipes, conduits, flumes and other works through, over or upon any land for the drainage, conveyance or passage of water;

Discharging water on lands.

- (b) The right to discharge water upon any land or by, through or into any existing means of drainage, whether natural or artificial;

Draining or diverting waters in streams, etc.

- (c) The right to drain off, lower or divert the water of any lake, pond, river, stream or watercourse, or any other water, notwithstanding that the same or part thereof may be on the land of or owned by any other person or that any other person may have rights or interests in or to such water or the use thereof;

Storing water—flooding.

- (d) The right to collect and dam back water, notwithstanding that it may overflow other land;

Right to take water.

- (e) The right to take or divert and use for or in connection with the working of his own mine or quarry and bring thereto for such use any specified water, and to construct and maintain dams and other works and do all other things necessary or convenient therefor;

Rights of way for roads, tramways, aerial tramways, etc.

- (f) Rights of way or passage through or over any land or water, and the right to construct, improve, maintain and use suitable roads, tramways aerial tramways, channels, waterways, passages and other means of transit and transportation upon, through or over any land or water, together with

such other rights of entry upon and use of land and water as may be necessary or convenient therefor;

- (g) The right to transmit electricity or any other kind of power, or have it transmitted, through or over any land or water in any form or manner and to do everything necessary or convenient therefor;
Transmission of electricity.
- (h) The right to enter upon and use for or in connection with the working of his own mine or quarry a specified area of other land;
Entering upon and using other lands.
- (i) The right to deposit tailings, slimes or other waste products upon any land, or to discharge the same into any water, the effect of such deposit or discharge not being injurious to life or health.

(2) No such right shall be granted unless any injury or damage caused to any other person thereby can be adequately compensated for, nor unless in all the circumstances it seems reasonable and fitting to grant the same; and in the exercise of any right so granted no unnecessary injury or damage shall be done to the land, property, rights, or interests of other persons, and all injury and damage which may be caused to any person by the granting and exercise of any right obtained under this section shall be fully compensated for.
Compensation.

(3) The order or award granting the right shall fix such compensation, or shall provide for the ascertainment thereof and shall contain any provisions that may be deemed proper for securing the same and for protecting the rights and interests of any person whose land, property, rights or interests are affected or endangered, and if deemed proper may require the applicant to make grants or concessions to or construct works or do any other thing for, or for the benefit of, any such person or his land or property, and such order or award may in all cases be upon such terms and may grant the right upon such conditions and for such time as may be deemed meet.
How fixed.

(4) In every application for such an order or award the applicant, in addition to anything else required or directed, shall file in duplicate with the Commissioner a clear and precise statement of the right or rights being applied for, of the land or property affected, and the owner or owners thereof so far as the same can be ascertained, a map or plan of the locality showing the land and water involved, and definite and detailed plans and specifications of the works or things proposed to be constructed or done; and for the purpose of preparing the same the Commissioner may authorize the applicant, his engineers and assistants, to enter upon the land of any other person and make such examinations and measurements as may be necessary, and such statement, map
Material to be filed on application.

or plan, and plans and specifications may, by order be amended or altered or modified at any stage of the proceedings. The Commissioner may give directions as to the notice to be given to the parties interested, the time and manner of service, and the particulars to be furnished to such parties respectively.

Rights conferred to run with the lands.

(5) All rights and benefits, and burdens and obligations, created under this section shall run with and be appurtenant and incident to the mine, quarry, mining lands, mining rights and the other land, property, rights and interests in respect of which they are created.

Application to patented lands.

(6) This section shall apply to and against patented, as well as unpatented land, rights and interests, whether owned or held by a corporation or company or a mining or other partnership or by a private person, but nothing contained therein or done thereunder shall, without the consent of the Minister, affect any Crown lands or any public interest.

Commissioner may change order or award.

(7) The commissioner for good cause shown and on such terms as may seem just, may by subsequent order or award at any time change, supplement, alter, vary or rescind any order or award made under the authority of this section.

Rights not to be exercised until after expiration of time for appeal.

(8) Rights granted under this section shall not be exercised until the time for appealing from the order or award granting the same has expired, or, where an appeal is entered, until the appeal is disposed of, but from and after such time, subject to any restriction or postponement provided for in the order or award, the person to whom any such right is granted may enter upon any land or property and exercise the right so granted, and any person who after such time obstructs the exercise of any such right or wilfully neglects or refuses to obey any order or award made under this section shall be guilty of an offence against this Act, and, in addition to any other liability, shall incur a penalty not exceeding \$250, for each day such obstruction, neglect or refusal continues. 2 Geo. V. c. 8, s. 28.

Offence and penalty.

REGULATIONS BY ORDER IN COUNCIL.

Lieutenant-Governor in Council may make regulations to carry out provisions of Act.

188.—(1) The Lieutenant-Governor in Council may make such rules and regulations as he may deem necessary for carrying out the provisions of this Act or to meet cases which may arise for which no provision is made in the Act, or when he deems the provision made to be ambiguous or doubtful, and may impose penalties not exceeding \$200 or not exceeding three months' imprisonment for the violation of any such rule or regulation.

Regulations as to making roads, ditches, etc.

(2) The Lieutenant-Governor in Council may make such regulations as he may deem necessary for the opening, construction, maintenance and use of roads to, through or over mining claims, mining locations or lands hereto-

done or hereafter sold or granted as mining lands or recorded as mining claims or locations, and for the opening, construction, maintenance and use of ditches, aqueducts or raceways through, over or upon such claims, locations or land for the conveying and passage of water for mining purposes.

18. Rules and regulations made under the provisions of this section shall have force and effect only after the same shall have been published in the *Ontario Gazette*, and if made when the Assembly is sitting shall be laid before the Assembly during the then Session, and if made at any other time shall be laid before the Assembly within the first fifteen days of the Session next after the date thereof, and in case the Assembly at such Session, or if the Session does not continue for three weeks after such rules or regulations are laid before the Assembly, at the ensuing Session, disapproves by resolution of such rule or regulation either wholly or in part, the rule or regulation, so far as the same is disapproved, shall have no effect from the time such resolution is passed. 8 Edw. VII. c. 21. s. 187.

189. With the consent of the Lieutenant-Governor in Council, and on such terms as he may see fit, any company authorized to supply electrical power or energy or compressed air or both may from time to time construct, maintain and operate transmission lines, air pipe lines, sub-stations and other conveniences for the transmission of electrical power or energy or compressed air or both in and through any mining division and for any of such purposes may enter upon, take and use any mining lands or any privilege or easement required by such company for such purposes without the consent of the owner thereof, but subject to the payment of such compensation or annual rent for the privilege or easement required, and authorized as may be determined by the Lieutenant-Governor in Council, and the Lieutenant-Governor in Council may from time to time revoke or vary the terms upon which any right conferred under the authority of this section may be exercised. 1 Geo. V. c. 17. s. 45 (1).

FEEB.

190. Fees shall be payable under this Act according to the tariff in the Schedule hereto, and except as otherwise mentioned shall be for the use of Ontario. 8 Edw. VII. c. 21. s. 188.

ON CANCELLATION OF PATENT, LANDS AND RIGHTS TO REVERT IN CROWN.

191. Whenever a patent or lease of mining lands or mining rights is by proceedings in the Supreme Court or the instance of the Crown repealed or annulled, such lands and mining rights shall thereupon become and be withdrawn from exploration, discovery, staking out, lease, or sale and every discovery upon and claim on such lands or min-

Regulations may be published in the *Ontario Gazette* and before Session.

Transmission of electricity in Mining Division and entering on lands without consent of owner.

Fees.

lands and mining rights or mining rights shall thereupon become and be withdrawn from exploration, discovery, staking out, lease, or sale and every discovery upon and claim on such lands or min-

ing rights and to the mines or minerals on, in or under such lands made or existing at any time before the repeal or avoidance of the patent or lease shall become and be absolutely null and void; and such lands, mining rights, mines and minerals shall be thenceforth vested in the Crown freed and discharged of and from every claim. 8 Edw. VII. c. 21, s. 189.

DEFAULT OF LESSEE UNDER MINES ACT, 1897

Forfeiture of
leases under
Rev. Stat.
c. 36.

192. If default is made by the lessee of a mining location leased under the authority of *The Mines Act*, chapter 36 of the Revised Statutes of Ontario, 1897, in the payment of rent the lease shall be forfeited, but the lessee may defeat the forfeiture by payment of the full amount of rent within ninety days from the day when the same became payable; and in default thereof the lease shall be absolutely forfeited and void, any statute or law to the contrary notwithstanding, and all claims of the lessee or his assigns shall from and after such period forever cease and determine. 8 Edw. VII. c. 21, s. 190.

Default made
by one of
several co-
owners or co-
lessees.

193.—(1) Upon the failure of any one or more of several co-owners or co-lessees of a location to contribute his or their proportion of the expenditures or of the rental necessary to hold such location, the co-owners or co-lessees who have performed the labour or made the improvements or paid the rent as required by the provisions of *The Mines Act*, chapter 36 of the Revised Statutes of Ontario, 1897, may, at the expiration of the year, give such delinquent co-owner or co-lessee, or in case of his death his personal representative, notice in writing, served personally or by registered post, addressed to his last known place of abode calling upon him to make the necessary payment; and if upon the expiration of three calendar months from such notice the delinquent co-owner or co-lessee, or his personal representative, shall have failed to contribute his proportion to meet such expenditure or rental, upon report thereof by the Deputy Minister of Mines, the Minister of Lands, Forests and Mines may order that the interest of the delinquent co-owner or co-lessee in the location shall become the property of and be vested in his co-lessees or co-owners who have made the expenditures or paid the rent, or if the Minister thinks fit to refer the matter to a Judge of the High Court Division, the Judge shall have authority to make the like order.

Death of
delinquent.

(2) In case of the death of a delinquent co-owner or co-lessee, either before or after default in respect of his share, and no person has taken out administration to his estate or has obtained probate of his will, the notice provided for in the preceding subsection may be given to his heirs. 8 Edw. VII. c. 21, s. 191.

194. The next two preceding sections shall be deemed to have been in force in the same manner and to the same extent as if chapter 36 of the Revised Statutes, 1897, had not been repealed, and it is declared that the Minister of Lands and Mines and the Minister of Lands, Forests and Mines have each had all the powers by the said Revised Statute conferred upon the Commisisoner of Crown Lands with respect to the matters provided for by the said sections and that the Deputy Minister of Mines has had with respect to such matters, all the powers by the said Revised Statutes conferred upon the Director of the Bureau of Mines. 8 Edw. VII. c. 21, s. 192.

195.—(1) The corporation of any county, or township in that part of Ontario lying south of the French River, Lake Nipissing and the River Mattawan wherever minerals are found, may sell or lease, by public auction or otherwise, the right to take minerals found upon or under any roads over which the township or county has jurisdiction, if considered expedient so to do.

(2) No such sale or lease shall take place until after due notice of the intended by-law has been posted up in six of the most public places in the immediate neighbourhood of such road, for at least one month previous to the time fixed for considering the by-law.

(3) The deed of conveyance, or lease to the purchaser or lessee under the by-law, shall contain a proviso protecting the road for public travel, and preventing any user of the granted rights which would interfere with public travel.

(4) In the remaining portions of Ontario the mines, minerals and mining rights in, on or under all common and public highways and road allowances shall be and are hereby vested in His Majesty, and may be sold, leased or otherwise disposed of under this Act. Where any mining location or mining lands adjoin a common and public highway or road allowance, and the mineral vein or deposit thereon extends into or under such highway or road allowance, the owner or owners thereof shall have the right to purchase or lease the mines, minerals and mining rights in, on or under the same, subject to the provisions of this Act, or where there are mining locations or mining lands on both sides of such highway or road allowance the said rights shall accrue to the owner or owners on both sides thereof as respects the half of such highway or road allowance adjoining his or their lands. This subsection shall not apply to highways on lands heretofore granted by the Crown under this Act, or in the grant whereof the mines and minerals were not reserved to the Crown.

(5) The patent or lease of such mines, minerals and mining rights shall contain a proviso protecting the road for public travel and preventing any user of the granted rights which

Patent or
lease to
protect public
travel.

would interfere with public travel unless and until a road in lieu thereof has been provided and accepted by the municipal corporation having control of the road.

Previously
acquired
rights
preserved.

(6) Subsections 4 and 5 shall not affect any rights acquired from or any agreement made or entered into with any municipal corporation under this section prior to the first day of May, 1904. 2 Geo. V. c. 8, s. 30.

SCHEDULE.

THE MINING ACT OF ONTARIO.

APPENDIX OF FORMS.

- Form 1. Miner's License. (*See sec. 23 (1).*)
- " 2. Affidavit verifying copy of license to Company to trans-act business in Ontario. (*See sec. 23 (6).*)
- " 3. Renewal of Miner's License. (*See sec. 27.*)
- " 4. Application to record a Mining Claim. (*See sec. 59 (1).*)
- " 5. Application for a Free Grant. (*See sec. 59 (2).*)
- " 6. Affidavit of discovery and staking out of a Mining Claim. (*See sec. 59 (3).*)
- " 7. Affidavit showing right to Free Grant. (*See sec. 63 (1).*)
- " 8. Dispute against a Recorded Claim. (*See sec. 63 (1).*)
- " 9. Affidavit verifying a dispute. (*See sec. 63 (1).*)
- " 10. Certificate of Record of the staking out of a Mining Claim. (*See sec. 64.*)
- " 11. Transfer of unpatented Mining Claim. (*See sec. 72.*)
- " 12. Affidavit of execution of transfer or other instrument. (*See sec. 73.*)
- " 13. Certificate that interest in claim in question. (*See sec. 77 (2).*)
- " 14. Report of work. (*See sec. 78 (3).*)
- " 15. Affidavit verifying report of work. (*See sec. 78 (3).*)
- " 16. Certificate of performance of working conditions. (*See sec. 78 (4).*)
- " 17. Notice of intention to perform on one claim work for contiguous claims. (*See sec. 78 (5).*)
- " 18. Notice of abandonment of a Mining Claim, etc. (*See sec. 82 (1).*)
- " 19. Application for a Working Permit. (*See sec. 94, par. (b).*)
- " 20. Affidavit to accompany application for Working Permit. (*See sec. 94 par. (b).*)
- " 21. Certificate of Recorder of application for Working Permit to be affixed to No. 1 post. (*See sec. 94, par. (c).*)
- " 22. Working Permit. (*See sec. 94 (2).*)
- " 23. Notice of application for Working Permit to be posted up by Mining Recorder in his office. (*See sec. 95.*)
- " 24. Notice of issue of Working Permit to be affixed to No. 1 post. (*See sec. 97.*)
- " 25. Transfer of Working Permit. (*See sec. 100.*)
- " 26. Renewal of Working Permit. (*See sec. 101.*)

Form 27. Application for Patent of a Mining Claim. (*See sec. 106 (2).*)

- " 28. Boring Permit. (*See sec. 119 (2).*)
- " 29. Application for Boring Permit. (*See sec. 119, par. (b).*)
- " 30. Affidavit to accompany application for Boring Permit. (*See sec. 119, par. (b).*)
- " 31. Transfer of interest in Boring Permit. (*See sec. 119 (7).*)
- " 32. Certificate of Mining Partnership. (*See sec. 122 (1).*)
- " 33. Revocation of appointment of agent of a Mining Partnership. (*See sec. 122 (5).*)
- " 34. Certificate of appointment of new agent of a Mining Partnership. (*See sec. 122 (5) and (6).*)
- " 35. Transfer of share in a Mining Partnership. (*See sec. 122 (7).*)
- " 36. Dissolution of a Mining Partnership. (*See sec. 122 (9).*)
- " 37. Notice of Appeal to Mining Commissioner. (*See sec. 133 (3).*)
- " 38. Notice of claim or dispute. (*See sec. 136 (4).*)

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 1. (*See sec. 23.*)

Department of Lands, Forests and Mines.

No.

Fee \$

(*Name of place of issue and date of issue.*)

191 .

MINER'S LICENSE.

This License is issued to _____ called the
 Licensee, of the _____ of _____ in consideration of
 the payment of a fee of _____ dollars, under and subject to
 the provisions of *The Mining Act of Ontario*, to be in force until
 and including the 31st day of March next succeeding the date hereof,
 and is not transferable.

Mining Recorder of

Mining Division.

Stub for Form 1.

MINER'S LICENSE.

No.

Fee \$

Name of Mining Division
 Name of licensee
 Of
 Date of issue

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 2. (See sec. 23 (6).)

*Department of Lands, Forests and Mines.*AFFIDAVIT VERIFYING COPY OF LICENSE TO A COMPANY TO TRANSACT
BUSINESS IN ONTARIO.

County (or District) of _____
To Wit: _____ } I, _____ of _____
_____ } in the _____ of
_____ } make oath and say:

1. That I am Secretary (or President, etc.) of (a)
2. That hereto annexed is a true copy of the license issued by the Provincial Secretary of the Province of Ontario, authorizing (a) to transact business in the Province of Ontario.

Sworn before me at _____
in the _____

this _____ day of _____
191 _____

*A Commissioner for taking affidavits, or
Notary Public, or Mining Recorder.*

(a) Insert corporate name in full.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 3. (See sec. 27.)

Department of Lands, Forests and Mines.

No. of License Renewed _____ Fee \$ _____
No. of Renewal _____
(Place and date of issue of Renewal.)

191 .

RENEWAL OF MINER'S LICENSE.

This Renewal of Miner's License No. _____, issued by the Mining Recorder of _____ Mining Division, on the _____ day of _____ 191 _____, to _____ of _____ called the licensee, is issued to the licensee in consideration of the payment of the fee of _____ dollars, and under and subject to the provisions of *The Mining Act of Ontario*, renews the said license until and including the 31st day of March next succeeding the date hereof, and is not transferable.

Mining Recorder of _____ Mining Division.

Stub of Form 3.

RENEWAL OF MINER'S LICENSE.

No. of License Renewed _____ Fee \$ _____
No. of Renewal _____
Name of Licensee _____
Name of Mining Division _____
Date of issue of original License _____
Date of issue of Renewal _____

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 4. (See sec. 59 (1).)

Department of Lands, Forests and Mines.

APPLICATION TO RECORD THE STAKING OUT OF A MINING CLAIM.

To the Mining Recorder of

Mining Division:

Application is hereby made under the provisions of *The Mining Act of Ontario* to record the staking out of a mining claim containing _____ acres or thereabouts, composed of the area shown on the sketch or plan hereto attached and more particularly described as follows:—

The lengths of the outlines of the claim are as follows:

The name of the claim is _____

The discovery post is situate _____ feet from No. 1 post.

The discovery of valuable mineral in place, upon which this claim is based, was made on the _____ day of _____,

191____, at _____ o'clock _____ .m., by _____,

holder of miner's license No. _____

The claim was staked out and the lines cut and blazed thereon on the _____ day of _____, 191____.

The claim was staked out and is to be recorded in the name of _____, who resides at _____, whose post

office address is _____, and who is holder of miner's license No. _____, dated the _____ day of _____,

191____ issued by the Mining Recorder of _____ Mining Division.

Dated at _____, this _____ day of _____, 191____.

Name of applicant. License number.

Note.—If the applicant is not a resident of Ontario, the name, residence and post office address of some person resident in Ontario upon whom service may be made must be given, as follows:—

Service may be made upon _____, who resides at _____, in Ontario, and whose post office address is _____

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 5. (See sec. 59 (2).)

Department of Lands, Forests and Mines.

APPLICATION FOR A FREE GRANT.

To the Mining Recorder of

Mining Division.

The undersigned, holder of Miner's License No. _____, issued by

the Mining Recorder of _____ Mining Division, claims to

be the first discoverer of valuable metal, ore or mineral, at a point which is not less than five miles from the nearest known mine, vein, lode or deposit of the same kind of metal ore or mineral, as follows:

The discovery by me is of (a)

The location of the discovery is as shown on the accompanying sketch or plan.

The nearest mine, vein, lode or deposit of the same kind of metal, ore or other mineral, known to me, is at _____

I claim to be entitled to the said mining claim without payment of purchase price according to *The Mining Act of Ontario*.

I reside at _____, and my post office address is _____

Dated at _____, this _____ day of _____, 191____.

Name of Licensee.

Post office address of Licensee.

(a) State the kind of metal, ore or mineral.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 6. (See sec. 59 (3).)

Department of Lands, Forests and Mines.

AFFIDAVIT OF DISCOVERY AND STAKING OUT OF A MINING CLAIM.

County (or District) of } of I, of the
To Wit: } of in the

Holder of miner's license No. _____, dated the _____ day
of _____, 191____, issued by the Mining Recorder of
Mining Division, make oath and say:

1. That on the _____ day of _____ 191____, at the hour of _____ o'clock _____ m., I discovered valuable mineral in place upon the land comprised in the mining claim described and shown in the application and sketch or plan hereto attached and such discovery consisted of _____

(Give particulars of discovery, kind of ore or mineral, also, if possible, kind of rock enclosing it.)

2. That the said claim was staked out upon the said discovery on the _____ day of _____, 191____, as shown in the said application and sketch or plan hereto attached.

3. That the distances given in the said application and sketch or plan are as accurate as they could reasonably be ascertained, and that all the other statements and particulars set forth and shown in the said application and sketch or plan are true and correct.

4. That at the time of such staking out there was nothing upon the said lands to indicate that they were not open to be staked out as a mining claim, and I verily believe that they were so open and that the said staking out is valid and should be recorded.

5. That there are upon the said land or the lot or part lot or section of which they form a part no buildings, clearing or improvements for farming or other purposes, except as follows:

Sworn before me at
in the

e me at
 this of
 day of
 A.D. 191

Mining Recorder of

Mining Division

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 7. (See sec. 59 (3).)

Department of Lands, Forests and Mines.

AFFIDAVIT SHOWING RIGHT TO FREE GRANT.

County (or District) of } I, _____ of _____
To Wit: } in the _____ of _____
make oath and say:

1. That the statements contained in the application by _____, holder of Miner's License No. _____ hereto annexed, for a Free Grant of _____ No. _____, are true and correct in every particular.

Sworn before me at _____ }
in the _____ day of _____ }
A.D. 191_____ }

Mining Recorder of

Mining Division.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 8. (See sec. 63 (1).)

Department of Lands, Forests and Mines.

DISPUTE AGAINST A RECORDED CLAIM.

To the Mining Recorder of

Mining Division.

I, _____, holder of miner's license No. _____ hereby
dispute Mining Claim No. _____, recorded in the name of _____
_____, upon the lands known and described as _____

1. The said claim is illegal or invalid because (state fully how and why illegal or invalid).

2. (If it is claimed that the disputant or another licensee in whose behalf he is acting is entitled to be recorded for or is entitled to any right or interest in the lands or mining rights, or any part thereof, a statement to that effect must here be inserted, giving particulars.)

I reside at _____, and my post office address is _____

Dated this day of , 191 .

Signature of disputant

Address for service

(This must be a place within 5 miles of the Recorder's office.)

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 9. (See sec. 63 (1).)

Department of Lands, Forests and Mines.

AFFIDAVIT VERIFYING DISPUTE.

County (or District) of }
 To Wit: }

I, of the of
 in the of , holder of Miner's
 License No. , make oath and say:

1. I am the licensee signing the dispute attached hereto.
2. I have personal knowledge of the matters in said dispute mentioned, and I swear that the statements therein set forth are true and correct in substance and in fact.
3. The said dispute is, as I verily believe, one that is justified according to *The Mining Act of Ontario*, and the said dispute is not made for any improper purpose.

Sworn before me at }
 in the }
 of day of }
 A.D. 191 }

Mining Recorder of
 Mining Division.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 10. (See sec. 64.)

Department of Lands, Forests and Mines.

No.

Fee \$

CERTIFICATE OF RECORD OF STAKING OUT OF MINING CLAIM.

I hereby certify that I have this day granted to , of
 , the holder of miner's license No. , dated
 day of 191 , (issued by the Mining
 Recorder of the Mining Division), a certificate of
 record of mining claim No. , known as , containing
 acres, more or less.

Dated at , this day of , 191 .

Mining Recorder of Mining Division.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 11. (See sec. 72.)

Department of Lands, Forests and Mines.

TRANSFER OF UNPATENTED MINING CLAIM.

The undersigned, holder of miner's license No. _____, issued by the Mining Recorder of _____ Mining Division, in consideration of the sum of _____ dollars (receipt whereof is hereby acknowledged), doth hereby transfer to _____, who resides at _____, whose post office address is _____, and who is holder of miner's license No. _____, issued by the Mining Recorder of _____ Mining Division, the interest of the undersigned in Mining Claim No. _____ in the Mining Division, particularly described as follows:

Dated at _____, this _____ day of _____, 191 _____.

Witness, _____ Signature of Transferor.

Note 1.—If transferee is not a resident of Ontario, the name, residence and post office address of some person resident in Ontario, upon whom service may be made, must be given, as follows:

Service may be made upon _____, who resides at _____ in Ontario, and whose post office address is _____

Note 2.—Affidavit, Form 12, must be attached.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 12. (See sec. 73.)

Department of Lands, Forests and Mines.

AFFIDAVIT OF SUBSCRIBING WITNESS VERIFYING TRANSFER OR OTHER INSTRUMENT.

County or District of _____

I, _____ of the _____ of _____, in the County (or District) of _____, make oath and say:

1. That I was personally present and did see the annexed (or within) instrument signed and executed by _____ one of the parties thereto;
2. That the said instrument was executed at _____,
3. That I know the said party;
4. That I am a subscribing witness to the said instrument.

Sworn before me at _____ in the _____

of _____ this _____ day of _____ 191 _____.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 13. (See sec. 77 (2).)*Department of Lands, Forests and Mines.*

CERTIFICATE THAT INTEREST IN CLAIM IN QUESTION.

I certify that in a proceeding commenced by
 who resides at , and whose post office address is
 , an interest is called in question in Mining Claim
 (or as the case may be) No. , recorded in Mining
 Division in the name of upon the following land:

The nature of the proceeding is

Dated this day of , 191 .

Mining Commissioner or Mining Recorder.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 14. (See sec. 78 (3).)*Department of Lands, Forests and Mines.*

REPORT OF WORK. (a)

To the Mining Recorder of Mining Division:

I, the undersigned, holder of Miner's License No. , (issued
 by the Mining Recorder of Mining Division), being
 the holder of (b) No. , comprising the lands
 known and described as
 hereby state and report that I (c) have in conformity with *The
 Mining Act of Ontario* performed or caused to be performed there-
 on days' work, not before reported, consisting
 of and that the names and residences
 of the men who performed the said work and the dates upon which
 each man worked in its performance are as follows:

I reside at , and my post office address is

Dated at , this day of , 191 .

Name of Licensee.

(a) This report must be filed with the Mining Recorder not later
 than ten days after the time within which such mining operations
 are required to be performed.

(b) State whether mining claim, quarry claim or working permit.

(c) Or , on my behalf (as the case may be).

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 15. (See sec. 78 (3).)

Department of Lands, Forests and Mines.

AFFIDAVIT VERIFYING REPORT OF WORK.

County (or District) of } I,
To Wit: } of the of
 } in the of
 } make oath and say:

1. That the statements contained in the annexed report by the holder of Miner's License No. _____ to the Mining Recorder of _____ Mining Division, relating to the performance of mining operations on (a) No. _____ are true and correct in every particular.

2. That the statement contained in the preceding paragraph is based upon the following information:

Sworn before me at the
of
in the
this day of
A.D. 191

Name of Licensee.

P. O. address of Licensee.

Mining Recorder of

Mining Division.

(a) State whether mining claim, quarry claim or working permit.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 16. (See sec. 78 (4).)

Department of Lands, Forests and Mines.

No.

Fee \$

Name of place of issue and date of issue.

191

CERTIFICATE OF PERFORMANCE OF WORKING CONDITIONS. (a).

This is to certify that _____ of _____, holder of miner's license No. _____ (issued by Mining Recorder of _____ Mining Division) licensee of (a) has performed all necessary mining operations on the said (a) to my satisfaction for the period of _____ months (or year) ending the day of _____, 191_____.

Mining Recorder.

(a) State whether mining claim, quarry claim or working permit.

Stub for Form 16.

No.

Date.

Name of Licensee

Number of License

Name of mining claim

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 17. (See sec. 78 (5).)

Department of Lands, Forests and Mines.

NOTICE OF INTENTION TO PERFORM ON ONE MINING CLAIM WORK FOR CONTIGUOUS CLAIMS.

To the Mining Recorder of the Mining Division:
 I, the undersigned, holder of Miner's License No. , issued
 by the Mining Recorder of Mining Division, hereby
 notify you that I am holder of mining claims numbers
 and , which are contiguous to each other,
 and that during the years 191 and 191 it is my intention to
 perform upon said mining claim No. all the work required by
 the provisions of *The Mining Act of Ontario*, to be performed upon
 said mining claims.

I reside at , and my post office address is
 Dated at , this day of , 191 .

Name of Licensee.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 18. (See sec. 82 (1).)

Department of Lands, Forests and Mines.

NOTICE OF ABANDONMENT OF A MINING CLAIM, ETC.

To the Mining Recorder of Mining Division:

The undersigned, holder of miner's license No. , issued by
 the Mining Recorder of Mining Division, and
 holder of mining claim No. , hereby abandons all interest in
 said mining claim, and authorizes you to record such abandonment
 in the books of your office.

I reside at , and my post office address is
 Dated at , this day of , 191 .

Name of Licensee.

P.O. address of Licensee.

Note.—If quarry claim, working permit or boring permit, modify form accordingly.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 19. (See sec. 94, par. (b).)

Department of Lands, Forests and Mines.

APPLICATION FOR WORKING PERMIT.

The undersigned _____, holder of miner's license No. _____, dated the _____ day of _____, 191____, issued by the Mining Recorder of the _____ Mining Division, hereby applies to the Mining Recorder of the _____ Mining Division for a working permit of the area consisting of _____, acres more or less according to the sketch or plan attached hereto, more particularly described as follows:

The area was staked out and the lines cut and blazed on the _____ day of _____, 191____, and the name by which the said area may be known is _____

I reside at _____, and my post office address is _____
Dated at _____, this _____ day of _____, 191____.

Signature of licensee in full.

Note.—If the applicant is not a resident of Ontario, the name, residence and post office address of some person resident in Ontario, upon whom service may be made, must be given, as follows:

Service may be made upon _____, who resides at _____, in Ontario, and whose post office address is _____.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 20. (See sec. 94, par. (b).)

Department of Lands, Forests and Mines.

AFFIDAVIT TO ACCOMPANY APPLICATION FOR WORKING PERMIT.

County (or District) of _____ To Wit:	{	I, _____ of the _____
		of _____ in the _____
		of _____
		holder of Miner's license No. _____
		dated _____ 191____
		issued by the Mining Recorder of _____ Mining Division, make oath and say:

1. That the sketch or plan hereto attached is correct and correctly shows the location of the posts referred to in the annexed application for working permit, and their distances from each other in feet as accurately as I could reasonably ascertain the same, and all the other statements in said application are true and correct.

2. That at the time of staking out the area described in said application there was nothing on said area to indicate that it was

not open to be staked for a working permit, and I know of no reason why said application is not valid, and I verily believe that I am entitled under the provisions of *The Mining Act of Ontario* to make the said application.

3. That the application for the said working permit is made on behalf of _____ of the _____ of _____, holder of miner's license No. _____ dated the _____ day of _____ 191____, issued by the Mining Recorder of _____ Mining Division.

Sworn before me at the _____
of _____
in the _____
of _____ this _____
day of _____
A.D. 190_____

Mining Recorder of _____

Mining Division.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 21. (See sec. 94, par. (c).)

Department of Lands, Forests and Mines.

CERTIFICATE OF MINING RECORDER OF APPLICATION FOR WORKING PERMIT TO BE AFFIXED TO No. 1 POST.

The undersigned hereby certifies that _____ of _____, the holder of miner's license No. _____, dated the _____ day of _____ 191____, and issued by the Mining Recorder of the _____ Mining Division has this day applied to me for a working permit of the area described as follows:

said to have been staked out by said licensee for himself or holder of miner's license No. _____, dated the _____ day of _____, 190____, issued by the Mining Recorder of the _____ Mining Division (or, as the case may be) on the _____ day of _____ 191____. Dated at _____ the _____ day of _____ 191____.

Mining Recorder of _____

Mining Division.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 22. (See sec. 94 (2).)*Department of Lands, Forests and Mines.*

No.

Fee \$5

WORKING PERMIT.

Pursuant to the provisions of *The Mining Act of Ontario*, and subject thereto, a Permit is hereby granted to
 of _____, the holder of License No. _____, dated this
 day of _____ 191____, issued by the

Mining Recorder of _____ Mining Division
 to enter into exclusive possession, for the purpose of prospecting
 for minerals, of the area consisting of _____ acres, more or less,
 defined in the sketch or plan attached hereto, and more particularly
 described as follows:

and to work thereon during the period of six months from the day
 of the date hereof, together with such renewal, if any, as is con-
 tained in the renewal hereof endorsed hereon.

Dated at _____, this _____ day of _____, 191____.

Mining Recorder of _____ Mining Division.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 23. (See sec. 95.)*Department of Lands, Forests and Mines.*

NOTICE TO BE POSTED UP BY THE MINING RECORDER IN HIS OFFICE OF
 THE APPLICATION FOR A WORKING PERMIT.

Notice is hereby given that _____, of
 the holder of Miner's License No. _____, dated the _____ day of
 190____, and issued by the Mining Recorder of _____
 Mining Division, has this day applied to me for
 a Working Permit of the area described as follows:

said to have been staked out by said licensee for himself, or
 holder of Miner's License No. _____, dated the
 day of _____ 190____, issued by the Mining Recorder of
 Mining Division, (or as the case may be)
 on the _____ day of _____ 191____.

Dated at _____ the _____ day of _____ 191____.

Mining Recorder of _____ Mining Division.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 24. (See sec. 97.)*Department of Lands, Forests and Mines.*

NOTICE OF ISSUE OF WORKING PERMIT TO BE AFFIXED TO NO. 1 POST.

I hereby give notice that on the _____ day of _____, 191____, a Working Permit, under the provisions of *The Mining Act of Ontario*, was issued by me to _____, the holder of License No. _____, dated the _____ day of _____, 191____, issued by the Mining Recorder of the _____ Mining Division such Working Permit being for (*insert description of land*), and to run for six months from the day of the date of same.

Dated at _____, this _____ day of _____, 191____.

Mining Recorder of _____ Mining Division.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 25. (See sec. 100.)*Department of Lands, Forests and Mines.*

TRANSFER OF WORKING PERMIT.

The undersigned, holder of miner's license No. _____ (issued by the Mining Recorder of _____ Mining Division), in consideration of the sum of _____ dollars (receipt whereof is hereby acknowledged), hereby transfers to _____, who resides at _____, and whose post office address is _____, and who is holder of miner's license No. _____ (issued by the Mining Recorder of _____ Mining Division), (a) _____ of the undersigned, in Working Permit No. _____, dated the _____ day of _____, 191____, issued by the Mining Recorder of _____ Mining Division.

Dated at _____, this _____ day of _____, 190____.

Witness.

*Signature of Transferor.**Post office address of Transferor.*

(a) State interest transferred.

Note.—Affidavit, Form 12, must be attached. If transferee is not a resident of Ontario, an address for service must be given, as shown in note under Form 11.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 26. (See sec. 101.)*Department of Lands, Forests and Mines.*

RENEWAL OF WORKING PERMIT.

(To be endorsed on original Working Permit.)

The period within which of
holder of miner's license No. . is authorized to have exclusive
possession, for the purpose of prospecting for minerals, of the area
described in Working Permit No. , and to work same, is
hereby renewed and extended until and including the
day of , 191 ,

Dated at , this day of , 191 .

Mining Recorder of Mining Division.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 27. (See sec. 106 (2).)*Department of Lands, Forests and Mines.*

APPLICATION FOR PATENT OF A MINING CLAIM.

To the Mining Recorder of Mining Division:
The undersigned, holder of Miner's License No. (issued by
the Mining Recorder of Mining Division), and
as holder of Mining Claim No. , applies for the issue of a
patent thereof.

All work to be performed thereon has been duly performed, and I
now hand you dollars, the purchase money thereof, and
request the issue of a patent thereof to of
being the holder of Miner's License No. (issued by the Min-
ing Recorder of Mining Division).

I reside at , and my post office address is

Dated at , this day of , 191 .

Name of Licensee Applicant.

*Note.—If the applicant is not a resident of Ontario, an address
for service must be given as shown in note under Form 4.*

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 28. (See sec. 119 (1).)*Department of Lands, Forests and Mines.*

No.

Fee \$

BORING PERMIT. (a).

Pursuant to the provisions of *The Mining Act of Ontario*, and subject thereto, a Boring Permit is hereby granted to of , the holder of Miner's License No. , dated the day of , 191 , issued by the Mining Recorder of Mining Division, to enter upon and prospect the area set forth and described in the sketch or plan attached hereto, for petroleum, natural gas, coal or salt, and to work thereon during a period of one year from the day of the date hereof.

Dated at , this day of A.D. 191 .

Minister of Lands, Forests and Mines.

(a) *This permit is to be in duplicate, and one of such duplicates is to be retained in the office of the Bureau of Mines.*

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 29. (See sec. 119 (b).)*Department of Lands, Forests and Mines.*

APPLICATION FOR BORING PERMIT. (a).

The undersigned, , holder of Miner's License No. , dated the day of 191 (issued by the Mining Recorder of Mining Division), hereby applies to the Mining Recorder of Mining Division, for a Boring Permit to prospect for petroleum, natural gas, coal or salt, of the area consisting of acres, more or less, according to the sketch or plan attached hereto, more particularly described as follows:

The area was staked out and posts were planted on the day of , 191 , and the name by which the said area may be known is

I reside at , and my post office address is

Dated at , this day of , 190 .

Signature of Licensee in full.

(a) *This form must be in duplicate.*

Note.—If the applicant is not a resident of Ontario, an address for service must be given as shown in note under Form 4.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 30. (See sec. 119 (b).)*Department of Lands Forests and Mines.*

AFFIDAVIT TO ACCOMPANY APPLICATION FOR BORING PERMIT. (a).

County (or District) of
To Wit:

}	I,
	of the
	of
	in the
	of
	make oath and say:

1. That I am the holder of Miner's License No. _____, dated the _____ day of _____, 191____, issued by the Mining Recorder of _____ Mining Division.

2. That the sketch or plan hereto attached is correct, and correctly shows the location of the posts referred to and the distance from each in feet, and all the statements and particulars set out in the application are true and correct.

3. That I have no knowledge of and have never heard of any adverse claim to the issuing of a Boring Permit in the area described in the application.

4. That the application for Boring Permit is made on behalf of _____ of _____, holder of Miner's License No. _____, in the _____ issued by the Mining Recorder of _____ Mining Division.

}	Sworn before me at
	in the
	of
	this _____ day of _____
	A.D. 191____

Mining Recorder of

Mining Division.

(a) *This affidavit must be in duplicate.*

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 31. (See sec. 119 (7).)

Department of Lands Forests and Mines.

TRANSFER OF INTEREST IN A BORING PERMIT.

The undersigned holder of Miner's License No. _____ (issued by the Mining Recorder of _____ Mining Division), in consideration of the sum of _____ dollars (receipt whereof is hereby acknowledged), hereby transfers to _____, who resides at _____, and whose post office address is _____, holder of Miner's License No. _____ (issued by the Mining Recorder of _____ Mining Division), (a) _____ of the undersigned in Boring Permit No. _____, dated the _____ day of _____, 190____, issued by the Minister of Lands, Forests and Mines.

Dated at _____ the _____ day of _____ 191____.

Signature of Transferor.

Post office address of Transferor.

Note.—Affidavit, Form 12, must be attached, and if the transferee is not a resident of Ontario, an address for service as shown in note under Form 11 must be given.

(a) *State interest transferred.*

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 32. (See sec. 122 (1).)

Department of Lands Forests and Mines.

CERTIFICATE OF A MINING PARTNERSHIP.

This is to certify that the undersigned have formed a mining partnership, and that the following particulars thereof are true and correct:

(a) The names in full and addresses of all the partners are as follows:

(b) The name under which the partnership is to be conducted is as follows:

(c) The total number of shares into which the partnership is divided is:

(d) The number of shares of the partnership owned by each partner is as follows:

(e) 1. The partnership commenced on the _____ day of _____, 191____.

2. The date at which the partnership is to terminate is _____.

(f) The name, address and occupation of the agent (a) of the partnership with whom all contracts may be made or entered into on behalf of the partnership is as follows:

Dated at _____ the _____ day of _____
A.D. 191 _____

Signatures of Members of Partnership.

The undersigned, being the duly appointed Agent of the above-named partnership referred to in this certificate thereof, hereby consents to act as Agent of the partnership.

Dated at _____, this _____ day of _____, 191 _____

Name of Agent.

P. O. address of Agent.

Witness:

(a) The Agent must be some individual resident in Ontario or an incorporated company having its head office in Ontario.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 33. (See sec. 122 (5).)

Department of Lands Forests and Mines.

REVOCATION OF APPOINTMENT OF AN AGENT OF A MINING PARTNERSHIP.

The undersigned being the majority in interest for the time being of the recorded members of the mining partnership known as " _____ " hereby revoke the appointment of

_____ of _____ the heretofore agent of the partnership, and hereby appoint _____ of _____ to be agent of the partnership in the place and stead of the said

Dated at _____, this _____ day of _____, A.D. 191 _____

Witness:

Signatures of Partners.

The undersigned, being the Agent above mentioned, hereby consents to act as Agent of the said partnership.

Name of Agent.

P. O. address of Agent.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 34. (See sec. 122 (5) and (6).)*Department of Lands Forests and Mines.*CERTIFICATE OF APPOINTMENT OF A NEW AGENT OF A MINING
PARTNERSHIP.

The undersigned, being the majority in interest for the time being of the recorded members of mining partnership known as " " hereby appoint of the of , in the of , to be the agent of the partnership in the place and stead of of formerly Agent of the partnership, and now deceased.

Dated at , this day of , 190 .

Witness :

Signatures of Partners. .

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 35. (See sec. 122 (7).)*Department of Lands Forests and Mines.*

TRANSFER OF SHARE IN A MINING PARTNERSHIP.

The undersigned member of the mining partnership known as " " in consideration of the sum of dollars (receipt of which is hereby acknowledged), hereby transfers to of the of in the county of , share in the mining partnership, and hereby authorizes the Mining Recorder of Mining Division to record the transfer thereof in the books of his office.

Dated at , this day of , 191 .

Witness :

*Name of Partner.**Post office Address.*

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 36. (See sec. 122 (9).)*Department of Lands Forests and Mines.*

DISSOLUTION OF A MINING PARTNERSHIP.

This is to certify that the mining partnership which has heretofore existed between the undersigned, under the name of “
 ,” is hereby dissolved, and the Mining Recorder
 of Mining Division is hereby authorized to record
 the dissolution thereof in the books of his office.

Dated at , this day of , 191 .

Witness:

Signatures of Partners.

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 37. (See sec. 133 (3).)*Department of Lands Forests and Mines.*

NOTICE OF APPEAL TO THE MINING COMMISSIONER.

In the Matter of Mining Claim No. (or as the case
 may be) Lot in the Concession, in the
 Township of (or as the case may be)
 Mining Division.

Take notice that (I)
 holder of Miner's License No. , hereby appeal to the
 Mining Commissioner from the decision (or act or refusal) of the
 Mining Recorder given (or done) on the day of
 191 , wherein (or by which) he (state
 briefly what is appealed against).

The grounds of objection to the decision (or act or refusal) are
 (state briefly in what respect and why the decision (or act or re-
 fusal) is claimed to be wrong).

I reside at , and my post office address is

Dated this day of , 191 .

Name of Apellant

Address for Service

(This must be a place within 5 miles from
 the Recorder's Office.)

To the Mining Recorder of
 Mining Division. }
 And to (names of adverse parties, if
 any). }

(Coat of Arms.)

THE MINING ACT OF ONTARIO.

Form 38. (See sec. 136 (4).)

Department of Lands Forests and Mines.

NOTICE OF CLAIM OR DISPUTE.

Take notice that I claim (or dispute) (state the nature of the claim or dispute), and that the grounds of my claim (or dispute) are the following (state briefly but clearly the nature of the claim or dispute).

I reside at _____, and my post office address is _____,
 Dated this _____ day of _____, 191 ____.
 To C. D. _____

A. B. _____

Note.—If the person giving the notice is not a resident of Ontario, the name, residence and address of some person resident in Ontario, upon whom service may be made, must be given, as follows:

Service may be made upon _____, who resides at _____,
 in Ontario, and whose post office address is _____

THE MINING ACT OF ONTARIO.

SCHEDULE OF FEES.

(Section 188.)

1. For a Miner's License or renewal thereof for an individual. (See secs. 23, 188)	\$5 00
2. For an individual miner's license issued on or after 1st October in any year. (See secs. 23, 188)	3 00
3. For a Miner's License or renewal thereof for a mining partnership where not more than two partners. (See secs. 23, 188)	5 00
4. For a Miner's License or renewal thereof for a mining partnership where more than two but not more than five partners. (See secs. 23, 188)	10 00
5. For a Miner's License or renewal thereof for a mining partnership where more than five partners. (See secs. 23, 188)	20 00
6. For a Miner's License or renewal thereof for a Company where capital authorized by letters patent or license under <i>The Extra Provincial Corporations Act</i> does not exceed \$40,000. (See secs. 23, 188)	25 00
7. For a Miner's License or renewal thereof for a Company where capital authorized by letters patent or license under <i>The Extra Provincial Corporations Act</i> is over \$40,000, but not exceeding \$100,000. (See secs. 23, 188)	50 00

8. For a Miner's License or renewal thereof for a Company where capital authorized by letters patent or license under <i>The Extra Provincial Corporations Act</i> is over \$100,000, but not exceeding \$500,000. (See secs. 23, 188)	\$75 00
9. For a Miner's License or renewal thereof for a Company where capital authorized by letters patent or license under <i>The Extra Provincial Corporations Act</i> is over \$500,000, but not exceeding \$1,000,000. (See secs. 23, 188)	100 00
10. And for each additional \$1,000 000 or fraction thereof. (See secs. 23, 188). Provided that in cases where the authorized capital of any such company is over \$1,000,000 and it is by affidavit of the president or secretary thereof proven to the satisfaction of the Minister or Deputy Minister of Mines that any part of such capital is actually being used in some other business enterprise and not in mining business within Ontario, such part may be deducted in fixing the license fees herein provided for	100 00
11. Whenever a Miner's License for a mining partnership or for a company is issued on or after 1st October in any year, the fee shall be only one-half the amount above specified.	
12. For recording each claim applied for on a license. (See secs. 59 (1), 188)	10 00
13. For examining Claim Record Book, per claim; fee to be for Recorder's own use. (See secs. 8, 183)	10
14. For inspecting any document filed with a Mining Recorder; fee to be for Recorder's own use. (See secs. 9, 188)	10
15. For recording a dispute, per claim. (See secs. 63, 188)	10 00
16. For certificate of record of claim. (See secs. 64, 188)...	1 00
17. For certificate of performance of working conditions. (See secs. 78 (4), 188)	1 00
18. On filing appeal from Recorder's decision. (See secs. 133, 188)	10 00
19. On filing appeal from Commissioner's decision. (See secs. 151, 188)	20 00
21. For filing transfer or agreement to sell or transfer the whole or part of a mining claim, quarry claim, working permit or boring permit, power of attorney, revocation of power of attorney, copy of writ of execution, discharge of execution or any other instrument affecting any recorded claim, right or interest, per claim. (See secs. 73, 100, 119 (7) 188)	3 00
22. For a "Substituted Miner's License." (See secs. 28, 188)	1 00
23. For Special Renewal License under section 85, par. (a), to save forfeiture, three times the prescribed license fee.	
24. For filing report of work under section 85, par. (b), to save forfeiture	25 00
25. For certificate relieving from disqualification under section 57	20 00
26. For recording extension of time for performing working conditions, per claim. (See secs. 80, etc., 188).....	1 00
27. For recording an order or judgment of the Mining Commissioner or made on appeal from him. (See secs. 77 (1), 188)	1 00
28. For recording a certificate that interest in claim or other recorded right or interest is called in question, per claim. (See secs. 77 (2), 188	10 00

29. For receiving and recording application for a working permit and giving certificate therefor. (See secs. 94 (b), 188)	\$5 00
30. For issuing working permit. (See secs. 94 (2) 188)	5 00
31. For renewal of working permit. (See secs. 101, 108)...	1 00
32. For filing certificate of mining partnership or certified copy thereof. (See secs. 122 (2), 188)	1 00
33. For recording certificate of revocation of Agent and appointment of new Agent for mining partnership. (See secs. 122 (5) 188)	1 00
34. For recording transfer of share or shares in a mining partnership. (See secs. 122 (7), 188)	25
35. For copies or certified copies of any document, paper or record obtained from any officer, per folio	10
36. Additional fee for the Recorder's own use with every application for a mining claim, quarry claim, working permit and boring permit including swearing the affidavit, if sworn before the Recorder, and for every other affidavit sworn before a Recorder	25
37. For abstract or copy of entries in Record Book respecting any mining claim, per claim	25

8 Edw. VII. c. 21, Schedule; 10 Edw. VII. c. 26, s. 45 (2);
2 Geo. V. c. 8, s. 29.

CHAPTER 33.

An Act to encourage the Refining of Metals in
Ontario.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Metal Refining Bounty* Short title.
Act. 7 Edw. VII. c. 14, s. 1.

2.—(1) The Treasurer of Ontario may, under the author- Payment of
bounty to
refiners.
ity of such regulations as may from time to time be made in that behalf by the Lieutenant-Governor in Council, pay in each year to the refiners of the metals or metal compounds hereinafter specified, when refined in Ontario from ores raised and mined in Ontario, a bounty upon each pound of such metal or compound so refined as follows:—

Class 1.—On refined metallic nickel or on refined oxide Nickel.
of nickel, 6 cents per pound on the free metallic nickel or on the nickel contained in the nickel oxide; but nickel upon which a bounty has already been paid in one form of product shall not be entitled to any further bounty in any other form; and the amount to be paid as bounty on the nickel products herein mentioned is not to exceed in all \$60,000 in any one year.

Class 2.—On refined metallic cobalt or on refined oxide Cobalt.
of cobalt, 6 cents per pound on the free metallic cobalt or on the cobalt contained in the oxide of cobalt; but cobalt upon which a bounty has already been paid in one form of product shall not be entitled to any further bounty in any other form; and the amount to be paid as bounty on the cobalt products herein mentioned is not to exceed in all \$30,000 in any one year.

Class 3.—On refined metallic copper or on refined sul- Copper.
phate of copper, 1½ cents per pound on the free metallic copper or on the copper contained in the sulphate of copper, or on any copper product carrying at least 95 per cent. of metallic copper, one-half cent per pound; but copper upon which a bounty has already been paid in one form of product shall not be entitled to any further bounty in

any other form; and the amount to be paid as bounty on the copper products herein mentioned is not to exceed in all \$60,000 in any one year.

Arsenic.

Class 4.—On white arsenic, otherwise known as arsenious acid, produced from mispickel ores and not from ores carrying smaltite or niccolite or cobaltite, one-half cent per pound; but the amount to be paid as bounty on the arsenic compound herein mentioned is not to exceed in all \$15,000 in any one year.

Abatement
when amount
of bounty
earned exceeds
appropriation.

(2) If so much of any of the above-mentioned classes of refined products is refined in Ontario in any one year that the amount hereby set apart in respect of the said class would be insufficient to pay the bounties herein provided therefor, then the bounty payable to the refiners of such class of refined products shall abate and be payable upon a *pro rata* basis so that not more than the maximum amount herein specified for any of the said classes shall be paid in respect of said class in any one year.

Period during
which payable.

(3) The bounties herein provided for shall cease and determine with the payment of any sum or sums which shall have been earned during the period of ten years from the 20th day of April, 1907. 7 Edw. VII. c. 14, s. 2; 2 Geo. V. c. 9, s. 1.

Conditions
of bounty.

3. No person, firm or company shall be entitled to claim or receive any of the bounties in this Act provided for unless such person, firm or company shall have been at all times prepared and ready and willing, during the period for which the bounty is claimed, to smelt, treat and refine ores from which the same product as that on which the bounty is claimed can be produced, belonging to any other person, firm or company, at rates and on terms and conditions approved by the Lieutenant-Governor in Council, or shall have been ready to purchase such ores at rates approved by the Lieutenant-Governor in Council as current market rates. 7 Edw. VII. c. 14, s. 3.

CHAPTER 34.

An Act respecting Town Sites.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Town Sites Act*. Short title.
2. Where any lot or parcel of land, forming part of the Crown lands hereafter sold, leased, located or staked out under any Act of this Legislature, is laid out as a town site or subdivided into town lots one quarter in acreage of all the lots or parcels shown on such plan or subdivision shall become the property of and be vested in the Crown. Right of Crown to one-fourth of lots on plan of town site. 10 Edw. VII. c. 9, s. 1.
3. The land to be so vested shall be ascertained as nearly as practicable as follows:—The Minister of Lands, Forests and Mines shall first select one lot or parcel, and the owner shall then select three lots or parcels and so on in turn, the Minister selecting one and the owner three until the division is made. Method of selection. 10 Edw. VII. c. 9, s. 2.
4. Every such plan or subdivision shall show the selection so made by marking upon each lot or parcel selected by the Minister, the word "Crown," and shall be approved of by the Lieutenant-Governor in Council and signed by the Minister of Lands, Forests and Mines. Showing selection on plan. Approval. 10 Edw. VII. c. 9, s. 3.
5. No such plan or subdivision and no instrument referring thereto shall be registered in any Registry Office or Land Titles Office, nor shall any person acquire any title to any lot or parcel after such division until the plan or subdivision has been so approved and signed. Conditions precedent to registration and title. 10 Edw. VII. c. 9, s. 4.
6. The land which becomes vested in the Crown under this Act may be sold, leased or otherwise disposed of in such manner and under such regulations as the Lieutenant-Governor in Council may from time to time prescribe. Disposing of lots selected by Crown. 10 Edw. VII. c. 9, s. 5.
7. The presentation to the Local Master of Titles for registration of any such plan signed by the Minister of Lands, Forests and Mines shall be a sufficient authority for the Local Master to enter His Majesty as owner of the lots marked as selected for the Crown as aforesaid. Entry of Crown as owner on Land Titles Register. 10 Edw. VII. c. 9, s. 6.

3. PUBLIC WORKS.

CHAPTER 35.

An Act respecting the Public Works of Ontario.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title. **1.** This Act may be cited as *The Ontario Public Works Act*.
10 Edw. VII. c. 11, s. 1.
- Interpreta- **2.** In this Act,
tion.
"Convey- (a) "Conveyance" shall include a surrender to the
ance."
"Depart- (b) "Department" shall mean Department of Public
ment."
"Judge." (c) "Judge" shall mean Judge of the county or district
court of the county or district in which the
land or property or any part thereof entered
upon, taken or appropriated under the provisions
of this Act is situate, or a Judge of the High
Court Division;
"Land." (d) "Land" shall include any estate, term, easement,
right or interest in, to, over or affecting land;
"Lease." (e) "Lease" shall include an agreement for a lease;
"Minister." (f) "Minister" shall mean Minister of Public Works;
"Owner." (g) "Owner" shall include a mortgagee, lessee, tenant,
occupant, person entitled to a limited estate or
interest, and a guardian, executor, administrator
or trustee in whom land or any interest therein
is vested.
"Public (h) "Public work" shall mean and include the dams,
Work."
hydraulic works, hydraulic privileges, harbours,
wharfs, piers, docks and works for improving
the navigation of any water, the lighthouses and
beacons, the slides, dams, piers, booms and other
works for facilitating the transmission of timber,
the roads and bridges, the public buildings, the

telegraph lines, government railways, canals, locks, drydocks, and all other property belonging to Ontario, and also all works and properties acquired, constructed, extended, enlarged, repaired, equipped or improved at the expense of Ontario, or for the acquisition, construction, repairing, equipping, extending, enlarging or improving of which any public money is appropriated by this Legislature, and every work required for any such purpose, but not any work for which money is appropriated as a subsidy only;

- (i) "Registry office" shall include land titles office and shall mean the registry or land titles office for the registry division or locality within which the land is situate; ^{"Registry office."}
- (j) "Superintendent" shall mean the superintendent of the public work of which he has, under the Minister, the charge and direction; ^{"Superintendent."}
- (k) "Surrender" shall include a conveyance to His Majesty, or to the Minister, or to any officer of the Department, in trust for or to the use of His Majesty. ^{"Surrender."} R.S.C. c. 143, s. 2. 10 Edw. VII. c. 11, s. 2.

3. There shall continue to be a Department of Public Works, over which the Minister of Public Works shall pre- ^{Department and Minister.} side. 10 Edw. VII. c. 11, s. 3.

4. There shall be a Deputy Minister of Public Works, who shall be appointed by the Lieutenant Governor in Council and shall perform such duties as may be assigned to him by the Lieutenant Governor in Council or by the Minister. ^{Deputy Minister.} 10 Edw. VII. c. 11, s. 4.

5. The Lieutenant Governor in Council may also appoint an architect, an engineer, a secretary, a law clerk, an accountant, and as many other officers and servants as from time to time may be deemed necessary for the proper conduct of the business of the Department and for the construction, maintenance, use and repair of public works and all property real and personal connected therewith or under its control; and all such officers and servants shall have such powers and perform such duties as may be assigned to them by the Lieutenant Governor in Council or by the Minister. ^{Other officers and servants.} 10 Edw. VII. c. 11, s. 5.

6.—(1) The Minister shall have the management of the Department, shall oversee and direct the officers and servants thereof and may suspend from duty any officer or servant. ^{Powers and duties of the Minister.}

(2) The Minister may enter into any contract or agree- ^{Requirements as to contracts.} ment that he may deem advisable in carrying out the pro-

visions of this Act; but no contract or agreement shall be binding upon the Crown or be deemed to be the act of the Minister unless signed by him and sealed with the seal of the Department.

Tenders for
public works.

Exception.

(3) The Minister shall, by public advertisement, invite tenders for the construction or repair of all public works, except in cases of pressing emergency, where delay would be injurious to the public interest, or where from the nature of the work, it can be more expeditiously or economically executed by the officers and servants of the Department, or by day labour.

Security from
contractors.

Provision
when lowest
tender is not
accepted.

(4) Where a public work is being carried out by contract, the Minister shall take reasonable care that security be given to and in the name of His Majesty for the due performance of the work within the amount and time specified for its completion, and in all cases where the Minister deems it inexpedient to let the work to the lowest bidder, he shall report the same and obtain the authority of the Lieutenant Governor in Council before passing by a lower tender; but no sum of money shall be paid to a contractor, nor shall any work be commenced on any contract until the contract has been signed by all the parties thereto, nor until the requisite security has been given.

Attestation
of accounts.

(5) The Minister may require any account sent in by any person employed by the Department to be attested on oath.

Power to
hold enquiry
on oath.

(6) The Minister may send for and examine on oath all such persons as he may deem necessary touching any matter upon which his action is or may be required, and may cause such persons to bring with them such papers, plans, books, documents and things as it may be necessary to examine with reference to such matter, and may pay such persons a reasonable compensation for their time and disbursements, and every such person shall attend at the summons of the Minister after due notice, and in default shall incur a penalty not exceeding \$20 recoverable under *The Ontario Summary Convictions Act*.

Rev. Stat.
c. 90.

Annual report
of Minister.

(7) The Minister shall submit to the Lieutenant Governor an annual report of all the works under the control of the Department, showing the state of each work, the amounts expended in respect thereof, and such further information as may be requisite to enable the Assembly to judge of the work of the Department.

Presentation.

(8) Such report shall be laid before the Assembly within twenty-one days after the commencement of the next Session. 10 Edw. VII. c. 11, s. 6.

Payments
under this
Act.

7. Where any payment is to be made by the Minister under the authority of this Act it shall be made out of such money as may be appropriated by this Legislature for that

purpose, and not otherwise, and the Minister shall not be personally liable therefor, or for any proceedings had or taken by virtue of this Act. 10 Edw. VII. c. 11, s. 7.

8. All public works constructed or completed at the expense of Ontario, all land, streams, watercourses and property, real or personal, acquired for the use of public works, and What property, etc., to be under control of Department.

(a) all canals, locks, dams, hydraulic works, harbours, piers and other works for improving the navigation of any water;

(b) all slides, dams, piers, booms and other works for facilitating the transmission of timber;

(c) all hydraulic powers created by the construction of any public works;

(d) all roads and bridges, all public buildings, all railways and rolling stock thereon, all vessels, dredges, scows, tools, implements and machinery for the improvement of navigation, all drains and drainage works and all property acquired, constructed, repaired, equipped, maintained or improved at the expense of Ontario.

not under the control of the Government of Canada, shall unless otherwise provided by law be and remain vested in His Majesty and under the control of the Department. 10 Edw. VII. c. 11, s. 8.

9.—(1) Any property, real or personal, no longer required for the use of any public work, may be sold, leased or disposed of under the authority of the Lieutenant Governor in Council. Power to sell.

(2) Such property shall be so sold, leased or disposed of by tender or public auction, except that a lease for a term not exceeding five years may be made without tender or public auction. 10 Edw. VII. c. 11, s. 9. Method of sale.

10. Contracts respecting any public works or property, real or personal, under the control of the Department, entered into by the Minister, or by any other person duly authorized to enter into the same, shall enure to the benefit of His Majesty, and may be enforced as if entered into with His Majesty under the authority of this Act. 10 Edw. VII. c. 11, s. 10. Enforcement of contract.

11. All actions and other proceedings for the enforcement of any contract, for the recovery of damages for any tort or breach of contract, or for the trial of any right, in respect of property real or personal, under the control of the Department, shall be instituted in the name of the Attorney General of Ontario. 10 Edw. VII. c. 11, s. 11. Who may bring action.

Possession of
maps, etc.,
relating to
Public Works.

12. The Minister may require any person having the possession of any map, plan, specification, estimate, report or other paper, book, drawing, instrument, model, contract, document, record or thing relating to any public work, and not being private property, to deliver the same without delay to the Department. 10 Edw. VII. c. 11, s. 12.

POWER TO TAKE LAND, ETC.

Power to enter
on and use
land.

13. The Minister may himself, or by his engineers, superintendents, agents, workmen, or servants, for any purpose relative to the use, construction, maintenance or repair of a public work, or for obtaining better access thereto and without the consent of the owner,

- (a) enter into and upon any land to whomsoever belonging, and survey and take levels of the same, and make such borings, or sink such trial pits as he deems necessary;
- (b) enter upon, take and use any land, stream, water or watercourse;
- (c) enter with workmen, carts, carriages and horses, upon any land, and deposit thereon soil, earth, gravel, trees, bushes, logs, poles, brushwood or other material found on the land, or for the purpose of digging up, quarrying and carrying away earth, stone, gravel or other material, and cutting down and carrying away trees, bushes, logs, poles and brushwood therefrom;
- (d) make and use all such temporary roads to and from such timber, stone, clay, gravel, sand or gravel pits as are required by him for the convenient passing to and from the work during its construction or repair;
- (e) alter the course of any river, canal, brook, stream or watercourse, and divert or alter, as well temporarily as permanently, the course of any river, stream, railway, road, street, or way, or raise or sink the level of the same in order to carry them over or under, on the level of or by the side of the public work, as he thinks proper; but before discontinuing or altering any public road or any portion thereof, he shall substitute another convenient railway or road in lieu thereof; and the land theretofore used for the railway or road, or part of a railway or road so discontinued shall belong to the Crown and may be disposed of as to the Minister may seem proper; and
- (f) divert or alter the position of any water-pipe, gas-pipe, sewer, drain, or any telegraph, telephone or

electric light wire or pole. 10 Edw. VII. c. 11, s. 13.

14. The Minister may for and in the name of His Majesty ^{Power to acquire land.} purchase or acquire and, subject as hereinafter mentioned, may without the consent of the owner thereof enter upon, take and expropriate any land which he may deem necessary for

(a) the public purposes of Ontario, or

(b) the use or purposes of any Department of the Government thereof. 10 Edw. VII. c. 11, s. 14.

15. Where it is deemed necessary, in the building, main- ^{Restoration and maintenance of walls, fence.} taining or repairing of a public work, to take down or remove any wall or fence of any owner of land adjoining the public work, or to construct any ditch or drain for carrying off water, such wall or fence shall be replaced as soon as the necessity which caused its taking down or removal has ceased; and after the same has been so replaced, or when such ditch or drain is completed, the owner shall maintain such wall or fence, ditch or drain to the same extent as he might be by law required to do, if such wall or fence had not been so taken down or removed, or such ditch or drain had always existed. 10 Edw. VII. c. 11, s. 15.

16.—(1) Where any gravel, stone, earth, sand or water is taken at a distance from the public work, the Minister may ^{Sidings, water pipes and tracks.} lay down all necessary sidings, water pipes or conduits, or tracks in, over or upon any land intervening between the public work and the land on which such material or water is found, whatever the distance may be; and all the provisions of this Act, except such as relate to the filing of plans and descriptions, shall apply to obtaining the right of way from the public work to the land on which such materials are situated; and such right may be acquired for a term of years, or permanently as the Minister may think proper. ^{R.S.C. c. 143, s. 5.}

(2) The powers conferred by this section may be exercised, after the public work is constructed, for the purpose of ^{Powers as to repair and maintenance.} repairing and maintaining the same. 10 Edw. VII. c. 11, s. 16.

17.—(1) The Minister may employ an Ontario land surveyor or an engineer to make any survey or establish any boundary and furnish the plans and descriptions of any ^{Power to employ surveyor or engineer.} property acquired or to be acquired by His Majesty for a public work.

(2) The boundaries of such properties may be permanently established by means of proper stone or iron monuments ^{Establishing boundaries.} planted by the surveyor or engineer.

Effect.

(3) Such surveys, boundaries, plans and descriptions made, established or furnished by an engineer shall have the same effect to all intents and purposes as if the operations pertaining thereto or connected therewith had been performed and such boundaries had been established and such monuments planted by an Ontario land surveyor.

Confirmation.

(4) Such boundaries shall be held to be the true and unalterable boundaries of such property, if,—

(a) they are so established, and such monuments of iron or stone so planted, after due notice of the intention to establish and plant the same has been given in writing to the proprietors of the land thereby affected; and,

(b) a written description of such boundaries is approved and signed in the presence of two witnesses by such engineer or surveyor on behalf of the Minister and by the person concerned; or, in case of the refusal of any proprietor to approve or to sign such description, such refusal is recorded in such description; and,

(c) such boundary marks or monuments are planted in the presence of at least one witness who shall sign such description.

Discretion of Minister.

(5) It shall not be incumbent on the Minister or those acting for him to have boundaries established with the formalities in this section mentioned, but it may be resorted to whenever the Minister deems it necessary. 10 Edw. VII. c. 11, s. 17.

EXPROPRIATION.

Plans and descriptions.

18.—(1) Where the Minister desires to expropriate land under the power conferred by this Act he shall deposit in the proper registry office a plan and description of the land signed by himself or by the Deputy Minister or by the secretary of the Department, or by the superintendent of the public work, or by an engineer of the Department, or by an Ontario land surveyor, and such land shall thereupon become and be vested in the Crown.

Where land temporarily required, etc.

R.S.C. c. 143, s. 8.

(2) Where the land is required for a limited time only, or only a limited estate, right or interest therein is required, the plan and description so deposited shall indicate, by appropriate words written or printed thereon, that the land is taken for such limited time only, or that only such limited estate, right or interest therein is taken, and by the deposit in such case, the right of possession for such limited time, or such limited estate, right or interest, shall become and be vested in the Crown.

(3) In case of any omission, misstatement or erroneous description in any plan or description, a correct plan and description may be deposited with like effect. Correcting plans and descriptions. R.S.C. c. 143, s. 9.

(4) A plan and description of any land at any time in the occupation or possession of the Crown and used for the purposes of any public work, may be deposited at any time, in like manner and with like effect as herein provided, saving always the lawful claims to compensation of any person interested therein. Plans and descriptions of land occupied by the Crown. R.S.C. c. 143, s. 10.

(5) In all cases, when any such plan and description, purporting to be signed by the deputy Minister, or by the superintendent of the public work, or by an engineer of the Department, or by an Ontario land surveyor, is so deposited the same shall be deemed to have been deposited by the direction and authority of the Minister, and as indicating that in his judgment the land therein described is necessary for the purposes of the public work; and the plan and description shall not be called in question except by the Minister, or by some person acting for him or for the Crown. Verification of plans and descriptions. R.S.C. c. 143, s. 11. 10 Edw. VII. c. 11, s. 18.

19. Where land appropriated for a public work is Crown land, under the control of the Government of Ontario, a plan of such land shall be deposited with the Department of Lands, Forests and Mines. When land of Crown is taken. 10 Edw. VII. c. 11, s. 19.

Agreements and Conveyances.

20.—(1) Any tenant in tail or for life, guardian, tutor, curator, executor, administrator, committee or person, not only for and on behalf of himself, his heirs and assigns, but also for and on behalf of those whom he represents, whether married women, infants, issue unborn, lunatics, idiots, or other persons, seized, possessed or interested in any land or other property, may contract and agree with the Minister for the sale of the whole or any part thereof, and may convey the same to the Crown; and may also contract and agree with the Minister as to the amount of compensation to be paid for any such land or property, or for damages occasioned thereto, and may also act for and on behalf of those whom he represents in any proceeding for determining the compensation to be paid under the provisions of this Act. Contracts by tenants in tail, executors and others. R.S.C. c. 143, s. 15.

(2) Where there is no guardian or other person to represent a person under disability, the Judge may, after due notice to the persons interested, appoint a guardian or person to represent for any of the purposes mentioned in subsection 1 the person under disability. Representation of person under disability. R.S.C. c. 143, s. 16. 10 Edw. VII. c. 11, s. 20.

Warrant for Possession.

21.—(1) If any resistance or opposition is made by any person to the Minister, or to any person acting for him, Warrant for possession.

entering upon and taking possession of the land or exercising any power in respect thereof, the Judge may, on proof of the execution of a conveyance of such land to His Majesty, or agreement therefor, or of the depositing in the proper registry office of a plan and description thereof as aforesaid, and after notice to show cause given in such manner as he prescribes, issue his warrant to the sheriff of the county or district within which such land is situate directing him to put down such resistance or opposition, and to put the Minister, or some person acting for him, in possession thereof, or take such steps as may be necessary to enable him to exercise such power.

Duty and powers of sheriff.

(2) The sheriff shall take with him sufficient assistance for such purpose, and shall put down such resistance and opposition, and shall put the Minister, or such person acting for him, in possession thereof; and shall forthwith make return to the Court of such warrant, and of the manner in which he executed the same. 10 Edw. VII. c. 11, s. 21.

Compensation for Land Taken or Injured.

Right to compensation.

22. The Minister shall make to the owner of land entered upon, taken or used by him or injuriously affected by the exercise of any of the powers conferred by this Act due compensation for any damages necessarily resulting from the exercise of such powers, beyond any advantage which the owner may derive from the contemplated work; and any claim for such compensation not mutually agreed upon, shall be determined as hereinafter provided. 10 Edw. VII. c. 11, s. 22.

Notice to be given to owner.

23. Where land has been entered upon, taken or used by the Minister under the compulsory powers conferred by this Act the Minister shall, within sixty days after the registration of the plan and description of the land in the registry office, give notice to the owner,

- (a) if the owner is known and he is a resident of Ontario, by serving upon or by mailing by registered post addressed to him at his last known place of abode a notice describing the land taken or the right or easement exercised or intended to be exercised in, upon or over the land, and the nature of the work to be done and the date of the registration of the plan and description and stating that every person having any claim to compensation, must file the same in the office of the Minister within six months after such registration, or, in the case of land injuriously affected, within six months after the injury complained of, or in the case of a continuing injury within one year from the time when the injury began or became known to him, and

- (b) by the publication of a similar notice once a week for at least three weeks in some newspaper having a general circulation in the county or district in which the land affected is situate. 10 Edw. VII. c. 11, s. 23.

24. When the Minister has exercised any of the compulsory powers conferred by this Act other than the power to expropriate land, he shall within 60 days after the exercise of such power, give and publish a notice similar to and in the like manner as is provided for in section 23, and the provisions of section 27 as to claims to and for the determination of the compensation shall apply. 10 Edw. VII. c. 11, s. 24.

Compensation where land not expropriated.

25. Where the notice provided for by the two next preceding sections has been given, no claim of any kind for compensation in respect of land taken, used or injuriously affected in the exercise of the powers conferred by this Act shall be referred for determination under the provisions of this Act unless the claim and the particulars thereof have been filed with the secretary of the Department in the case of land taken within six months after the registration of the plan, or in the case of land injuriously affected within six months after the injury complained of, or in the case of a continuing injury within one year from the time when the injury began or became known to the claimant. 10 Edw. VII. c. 11, s. 25.

Time within which claim for compensation to be made.

26. If the Minister is of opinion that he can obtain the whole of any lot or parcel of land of which any part may be expropriated by him at a more reasonable price or to greater advantage than by acquiring such part only he may expropriate the whole of such lot or parcel and also a right of way thereto, if the same is separated from the public work, and may afterwards sell and convey the same or any part thereof as he deems expedient. 10 Edw. VII. c. 11, s. 26.

Power to take whole lot when part only required.

27. The Minister and the owner may agree upon the amount of the compensation, or either party may give notice in writing to the other that he requires the amount of such compensation to be determined by arbitration under the provisions of this Act. 10 Edw. VII. c. 11, s. 27.

Notice to determine amount of compensation.

28. Subject to the provisions of section 25, the Judge upon application of the Minister or of the owner, may appoint in writing a time and place at which he will determine the amount of such compensation and may give such directions for the service of the appointment and as to the persons to be served as he shall deem proper. 10 Edw. VII. c. 11, s. 28.

Appointment before Judge.

29. Where the Minister gives notice to the owner either before or after the service of the appointment upon him, that he desires that the compensation shall be determined by

Appointment before Ontario Railway and Municipal Board.

the Ontario Railway and Municipal Board instead of by the Judge, the Chairman of the Board shall give the appointment upon the like application and shall have power to give like directions as the Judge might have given under the next preceding section and the proceedings shall thereafter be taken before the Board. 10 Edw. VII. c. 11, s. 29.

Proceedings
before judge.

Rev. Stat.
c. 65.

30. Save as otherwise provided by this Act, the provisions of *The Arbitration Act* shall apply to the proceedings taken under this Act before the Judge. 10 Edw. VII. c. 11, s. 30.

Proceedings
before Board.

Rev. Stat.
c. 186.

31. The provisions of *The Ontario Railway and Municipal Board Act*, shall apply to proceedings taken before that Board under this Act. 10 Edw. VII. c. 11, s. 31.

Appeal to
Court of
Appeal.

32.—(1) Where the amount of the claim exceeds \$500, the Minister or the claimant may by leave of the Appellate Division, appeal to that Court from any determination or order of the Judge or of the Board under this Act as to compensation.

Terms.

(2) The leave may be granted on such terms as to the appellant giving security for costs and otherwise as the Court may deem just.

Procedure.

(3) The practice and procedure as to the appeal and incidental thereto shall be the same *mutatis mutandis* as upon an appeal from a county court.

Finality.

(4) The decision of the Appellate Division shall be final.

Rev. Stat.
c. 186, s. 43
not to apply.

(5) Section 48 of *The Ontario Railway and Municipal Board Act, 1906*, shall not apply to any appeal under this section. 10 Edw. VII. c. 11, s. 32.

Character of
compensation.

33. The compensation agreed upon or adjudged for any land or property acquired, taken, or used in or injuriously affected by the exercise of any of the powers conferred by this Act shall stand in the stead of such land or property, and any claim to or encumbrance thereon shall, as respects the Crown, be converted into a claim to or upon such compensation, and shall no longer affect such land or property so acquired, taken or used. 10 Edw. VII. c. 11, s. 33.

Right of
Crown to
abandon land
taken.

34.—(1) Where at any time before the compensation has been actually ascertained or determined, land taken for a public work, or any part thereof, is found to be unnecessary for the purposes of such public work, or if it is found that a more limited estate or interest therein only is required, the Minister may, by writing under his hand, registered in the proper registry office, declare that the land or such part thereof is not required and is abandoned by the Crown, or that it is intended to retain only such limited estate or interest as is mentioned in such writing, and thereupon

- (a) the land declared to be abandoned shall revest in the person from whom it was taken or in those entitled to claim under him, or
- (b) in the event of a limited estate or interest therein being retained by the Crown, the land shall so revest subject to the estate or interest so retained.

(2) Where part only of the land or all of it but a limited estate or interest therein is abandoned, the fact of such abandonment, and the damage if any sustained in consequence of that which is abandoned having been taken, and all the other circumstances of the case shall be taken into account in determining the amount to be paid to any person claiming compensation. Effect upon compensation.

(3) Where the whole of the land taken is abandoned, the person from whom it was taken shall be entitled to all damages sustained and all costs incurred by him in consequence of the taking and abandonment, and the amount of the damages shall be determined in the manner provided by this Act, and if a reference as to compensation is pending shall be determined on such reference. 10 Edw. VII. c. 11, s. 34. Damages where abandonment complete.

35. If the compensation agreed upon or adjudged does not exceed \$100, it may be paid to the person who under this Act may lawfully convey the land or property or agree as to the compensation, saving always the rights of any other person to such compensation as against the person receiving the same. 10 Edw. VII. c. 11, s. 35. Payment of compensation up to \$100.

36.—(1) In the cases provided for in section 20 the Minister shall, and, in all other cases if for any reason the Minister deems it advisable, he may pay the compensation into the office of the Accountant of the Supreme Court, with interest thereon at five per centum for six months. Payment of compensation into Court.

(2) A notice in such form and for such time as a Judge of the High Court Division may direct shall be published in such newspaper as the Judge may order, stating that the land is purchased, acquired or taken by the Crown under the provisions of this Act, and calling upon all persons entitled to the land or to any part thereof to file their claims to the compensation or any part thereof, and all such claims shall be adjudicated upon by the Judge, and the Judge shall make such order for the distribution, payment or investment of the compensation, and for securing the rights of all parties interested as to right and justice and to law appertains. Proceedings after payment into Court.

(3) If such order of distribution is obtained in less than six months after the payment of the compensation into court, the Judge may direct a proportionate part of the interest to be returned to the Minister, and if it is not obtained Adjustment.

until after six months have expired the Judge may order the Minister to pay interest for such further period as may be deemed just.

Representation
of parties.

(4) Where unborn issue or an unascertained person or class are interested in the compensation, the Judge may appoint such person as may be deemed proper to represent or act for them, and any order made shall be binding on them. 10 Edw. VII. c. 11, s. 36.

Power of
Minister to
require
particulars.

37. Every person who has any estate or interest in any land or property acquired, taken or used in or injuriously affected by the exercise of any of the powers conferred by this Act, or who represents any such person, shall, upon demand made therefor by or on behalf of the Minister, furnish to the Minister a true statement showing the particulars of such estate and interest and of every charge, lien or encumbrance to which the same is subject, and of the claim made by such person in respect of such estate or interest. 10 Edw. VII. c. 11, s. 37.

When
reparation by
Crown may be
ordered.

R.S.C. c. 143,
s. 30.

38. If the injury to any land or property alleged to be injuriously affected by the exercise of any of the powers conferred by this Act may be removed wholly or in part by any alteration in, or addition to, any public work, or by the construction of any additional work, or by the abandonment of any part of the land taken from the claimant, or by the grant to him of any land or easement, and if the Crown before an award is made undertakes to make such alteration or addition, or to construct such additional work or to abandon such portion of the land taken, or to grant such land or easement, the damages shall be determined in view of such undertaking, and the Judge or the Board, as the case may be, shall declare that, in addition to any damages awarded, the claimant is entitled to have such alteration or addition made, or such additional work constructed, or such part of the land abandoned, or such grant made to him. 10 Edw. VII. c. 11, s. 38.

Interest.

Interest on
compensation
money.

39.—(1) Interest at the rate of five per centum per annum may be allowed on the compensation from the time when the land or property was taken, used or injuriously affected: but no person to whom has been tendered a sum equal to or greater than the compensation shall be allowed interest thereon for any time subsequent to the date of the tender.

(2) If the Judge or the Board is of opinion that the delay in determining the compensation is attributable wholly or in part to any person entitled to the compensation or any part of it, or that he has not, upon demand, furnished to the Minister within a reasonable time a true statement of the particulars of his claim, the Judge or the Board may refuse

to allow him interest for the whole or any part of the time for which he might otherwise be entitled to interest, or may allow the same at such rate less than five per centum per annum as may appear just. 10 Edw. VII. c. 11, s. 39.

Arbitration of Claims under Contract.

40.—(1) If any person has a claim arising out of or connected with, the execution or fulfilment, or in respect of deductions made for the non-execution or non-fulfilment of a contract for the execution of any public work entered into with the Minister, either in the name of His Majesty, or in any other manner, the person may give notice in writing of his claim to the Minister, stating the particulars thereof, and how the same has arisen. Claims arising under contracts may be made.

(2) The claim may be referred by the Minister to the Board for determination under the provisions of this Act, but no claim shall be referred or be entertained unless within six months from the date of the completion of the contract or from the date of the last payment, made on account thereof, full particulars of the claim have been filed with the secretary of the Department. And may be referred by Minister for determination.

(3) No claim shall be so referred where by the terms of the contract the determination of any matters of difference arising out of or connected with the same are to be decided by the Minister or by some person named in the contract. When reference not allowed.
10 Edw. VII. c. 11, s. 40.

Payment of Compensation or Costs.

41. The Treasurer of Ontario may pay to any person, out of any unappropriated moneys forming part of the Consolidated Revenue Fund, any sum to which, under the provisions of this Act, he is entitled as compensation or for costs. Payment of compensation and costs.
10 Edw. VII. c. 11, s. 41.

MISCELLANEOUS.

42.—(1) All lands, streams, water-courses and property acquired for any public work shall be vested in the Crown and, when not required for the public work, may be sold, leased or otherwise disposed of under the authority of the Lieutenant Governor in Council. Interest and powers of the Crown.

(2) All hydraulic powers created by the construction of any public work, or by the expenditure of public money thereon, shall be vested in the Crown, and any part not required for the public work may be sold, leased or otherwise disposed of under the authority of the Lieutenant Governor in Council. Hydraulic powers.
10 Edw. VII. c. 11, s. 42.

Power to employ engineers, etc., to examine land for drainage, etc.

43. The Minister may employ engineers and surveyors to make examinations, surveys and levels of any swamp or bog land, or land occasionally or permanently flooded with water, and such engineers and surveyors shall be under the direction of the Department, and shall report to the Minister on the best means of draining or preventing the flooding of the land, the cost of the same, the quantity and quality of land proposed to be drained or saved from flooding, with an estimate of the improved value of the land. 10 Edw. VII. c. 11, s. 43.

Report of results.

44. The Minister shall submit to the Lieutenant Governor, in his annual report to be laid before the Assembly, a statement of the results of such examination, surveys and levels, and an estimate of the cost of reclaiming the land, so as to render them available for cultivation, with his recommendation respecting the same. 10 Edw. VII. c. 11, s. 44.

Power to make certain contracts.

45. The Minister may make contracts, in the manner hereinbefore prescribed, for the construction and repair of drains, bridges, roads, dams, dykes, slides and other works which he may deem necessary or proper to prevent the flooding of, or to carry off the water from, any such land, and to render the same available for cultivation. 10 Edw. VII. c. 11, s. 45.

Power to remove obstructions on report of engineer.

46.—(1) Where it has been ascertained, on the report of an engineer, that there exists, or is being or has been constructed, across a river, stream or water-course, any mill-dam, embankment or obstruction which impedes, or which, in the opinion of the engineer, will impede the free discharge of the water from such swamp, bog or flooded land, the Minister may stop the construction thereof, or cause the same to be removed, or a slide to be constructed, as in his opinion may be most advisable; and if the owner of such mill-dam, embankment or obstruction, or any other person suffers damage in consequence of the stopping of its construction, or of its removal, or of the construction of any slide under the provisions of this section, he shall be entitled to compensation to be agreed upon or determined under the provisions of this Act, due regard being had to the previous rightful or wrongful action of the owner in constructing the mill-dam, embankment or obstruction; and the compensation shall be paid within six months after the same has been agreed on or determined.

Compensation.

Control of slides.

(2) Every such slide shall be under the control of the Department; and the Minister, his engineers and agents, shall be entitled to free access to the same at all reasonable times, and for all reasonable purposes, including the regulating of the discharge of water over the slide, and its repair. 10 Edw. VII. c. 11, s. 46.

47. Nothing in this Act shall give authority to the Minister to incur any expenditure not previously sanctioned by this Legislature, except for such repairs and alterations as the immediate necessities of the public service demand. 10 Edw. VII. c. 11, s. 47.

48. The provisions of *The Ontario Drainage Act*, being Chapter 86 of the Revised Statutes of Ontario, 1887, shall not apply to expenditure under sections 43 to 46 upon lands in a provisional judicial district. 10 Edw. VII. c. 11, s. 48.

49. This Act shall apply to public works constructed, operated or maintained by any commission appointed by or under the authority of this Legislature and to every such commission; and the like powers and duties as are by this Act imposed or conferred upon the Minister may be exercised and shall be performed by such commission in respect of matters entrusted to it; and in the application of this Act thereto where the word "Minister" or the word "Department" occurs, it shall mean such commission. 10 Edw. VII. c. 11, s. 49.

CHAPTER 36.

An Act respecting Riots near Public Works.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Public Works Peace Preservation Act*. 10 Edw. VII. c. 12, s. 1.

Interpretation.

2. In this Act "Weapon" shall include any gun or other firearm, or air-gun, or any part thereof, or any sword, sword blade, bayonet, pike, pike-head, spear, spear-head, dirk, dagger, knife, or other instrument intended for cutting or stabbing, or any metal knuckles, or other deadly or dangerous weapon, and any instrument or thing intended to be used as a weapon, and all ammunition which may be used with or for any weapon. 10 Edw. VII. c. 12, s. 2.

Proclamation bringing Act into effect.

3.—(1) The Lieutenant-Governor in Council may by proclamation declare that on and after a day to be named therein, this Act shall be in force in any place in Ontario in which or in the vicinity of which any public Dominion or Provincial work, or a canal, railway or other work undertaken or carried on by an incorporated company is in process of construction, and the same shall take effect accordingly.

Rescinding.

(2) The Lieutenant-Governor in Council may, in like manner, declare this Act to be no longer in force in such place; but this shall not prevent the Lieutenant-Governor in Council from again declaring the same to be in force in such place.

Exemption of cities.

(3) No such proclamation shall have effect within the limits of a city. 10 Edw. VII. c. 12, s. 3.

Possession of weapons by employees on public works prohibited.

4.—(1) Upon and after the day so named in the proclamation, no person employed in or upon any such work within the limits specified in the proclamation, shall keep or have in his possession or under his care or control, within such limits, any weapon, under a penalty of not less than \$2 nor more than \$10 for every such weapon found in his possession, unless such person is a justice of the peace or a public officer, a soldier, sailor or volunteer in His Majesty's service, on duty, or a constable or other peace officer, or has a certificate of exemption from the operation of this section as

Exceptions.

hereinafter provided, or has at the time reasonable cause to fear an assault or other injury to his person, family or property.

(2) If sufficient cause is shown upon oath to the satisfaction of any Justice of the peace, he may grant to an applicant therefor not under the age of sixteen years, and as to whose discretion and good character he is satisfied by evidence upon oath, a certificate of exemption from the operation of this section for such period not exceeding twelve months, as he deems fit. Certificate of exemption.

(3) Such certificate shall be *prima facie* evidence of its contents and of the signature and official character of the person by whom it purports to be granted. 10 Edw. VII. c. 12, s. 4. Certificate to be evidence.

5. Before the day so named in the proclamation, every person employed in or upon any such work, who is not exempted under the next preceding section, shall bring and deliver up to a justice of the peace or to a Commissioner appointed by the Lieutenant-Governor for the purposes of this Act every weapon in his possession, and shall be entitled to obtain from him a receipt for the same. 10 Edw. VII. c. 12, s. 5. Delivery up of weapons to authorities.

6. When this Act ceases to be in force within the place where any weapon has been delivered up and detained in pursuance thereof, or when the owner or person lawfully entitled to such weapon satisfies the justice or Commissioner that he is about to remove immediately from the limits within which this Act is at the time in force, the justice or commissioner may deliver up to the owner or person authorized to receive the same, such weapon, on production of the receipt so given for it. 10 Edw. VII. c. 12, s. 6. Return of Weapons to owner.

7. Every weapon found in the possession of a person so employed after the day so named in the proclamation, and within the limits set forth in the proclamation, may be seized by any justice, Commissioner, constable or other peace officer, and thereupon shall be forfeited to the use of His Majesty. 10 Edw. VII. c. 12, s. 7. Seizure and forfeiture of weapons unlawfully kept.

8. If a person, for the purpose of defeating this Act, receives or conceals, or aids in receiving or concealing, or procures to be received or concealed, within the limits within which this Act is at the time in force, any weapon belonging to or in the custody of a person employed on any such work, he shall incur a penalty of not less than \$40 nor more than \$100. 10 Edw. VII. c. 12, s. 8. Penalty for aiding employees to evade this Act.

9.—(1) A justice of the peace or Commissioner having authority within the place where this Act is at the time in force, upon the oath of a credible witness that he believes Search for and seizure of weapon unlawfully kept.

that a weapon is in the possession of any person or in any house or place, contrary to the provisions of this Act, may issue his warrant to a constable or peace officer, to search for and seize the same, and he or any person in his aid may search for and seize the same in the possession of any person, or in such house or place.

Forcible entry. (2) If admission to such house or place cannot otherwise be obtained after demand, the constable or peace officer, and person in his aid, may enter the same by force, by day or by night, and seize such weapon; and unless the person within whose possession or in whose house or place the same is found, within four days next after the seizure, proves to the satisfaction of the justice or Commissioner that the weapon so seized was not in his possession or in his house or place contrary to the provisions of this Act, such weapon shall be forfeited for the use of His Majesty. 10 Edw. VII. c. 12, s. 9.

Monthly records. 10. Every justice or Commissioner shall make to the Provincial Secretary a monthly return of all weapons delivered to or seized by him, and detained under this Act. 10 Edw. VII. c. 12, s. 10.

Sale of weapons forfeited. Proceeds how applied. 11. Weapons forfeited under this Act shall be sold under the direction of the justice or Commissioner by whom or by whose authority the same were seized, and the proceeds of the sale, after deducting necessary expenses, shall be received by the justice or Commissioner and paid over by him to the Treasurer of Ontario. 10 Edw. VII. c. 12, s. 11.

Recovery of penalties. Rev. Stat. c. 90. 12. The penalties imposed by this Act shall be recoverable under *The Ontario Summary Convictions Act*. 10 Edw. VII. c. 12, s. 12.

MOUNTED POLICE FORCE.

Mounted Police Force. 13. For the better carrying this Act into effect, the Lieutenant-Governor in Council may cause a body of men not exceeding one hundred, inclusive of officers, and to be called "The Ontario Mounted Police Force," to be raised, mounted, armed and equipped, and to be placed under the command of such officers as the Lieutenant-Governor in Council deems necessary, and may cause such Police Force, or any part thereof to be employed in any place in which this Act is in force, under such Regulations as the Lieutenant-Governor in Council shall from time to time prescribe. 10 Edw. VII. c. 12, s. 13.

Officers of Police Force and others as justices of the peace. 14. The Lieutenant-Governor in Council may appoint the chief officers and such of the subordinate officers of the Police Force, and such other persons as he deems necessary, to be justices of the peace for the purposes of this Act for any

place in which this Act is in force; and such officers and persons may act as justices of the peace, although they may not have the qualifications in property required of others or may not reside in the county or district. 10 Edw. VII. c. 12, s. 14.

15. The men in the Police Force shall be constables and peace officers for the purposes of this Act, for the county or district in which they are employed. 10 Edw. VII. c. 12, s. 15.

Mounted Police-
men as
Peace officers.

EXPENSES.

16. The expenses of carrying this Act into effect upon or near a Provincial Public Work shall be paid through the Minister of Public Works out of the money appropriated for the work on which the expenses are incurred, and shall be charged as part of the cost of the work; but the sum expended in any one year shall not exceed \$40,000. 10 Edw. VII. c. 12, s. 16.

Expenses of
carrying
Act into effect.

17. The expenses attending the employment of such police force in any place in or in the vicinity whereof a railway, canal or work, undertaken and carried on by an incorporated company is in course of construction, shall in the first instance be paid out of the Consolidated Revenue Fund, and shall, on demand, be repaid to the Treasurer of Ontario by the incorporated company, or, if not so repaid, may be recovered from the company as a debt due to the Crown; and, when recovered, shall form part of the Consolidated Revenue Fund. 10 Edw. VII. c. 12, s. 17.

How the ex-
penses defray-
ed in case of
works carried
on by com-
panies.

CHAPTER 37.

An Act respecting The Bureau of Labour.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Bureau of Labour Act*. 10 Edw. VII. c. 13, s. 1.

Bureau of Labour established.

2. There shall be attached to the Department of Public Works a bureau, to be styled "The Bureau of Labour." 10 Edw. VII. c. 13, s. 2.

Secretary and other officers.

3. The Lieutenant-Governor in Council may appoint a Secretary of the said Bureau, and may also appoint such other officers as may be deemed necessary for the proper conduct of the Bureau. 10 Edw. VII. c. 13, s. 3.

Duties of Bureau.

4. It shall be the duty of the Bureau to collect, assort, systematise and publish information and statistics relating to employment, wages and hours of labour, co-operation, strikes, lockouts, or other labour difficulties, trades unions, labour organizations, the relations between labour and capital, and other subjects of interest to workingmen throughout Ontario, with such information relating to the commercial, industrial and sanitary condition of workingmen, and the permanent prosperity of the industries of Ontario, as the Bureau may be able to gather. 10 Edw. VII. c. 13, s. 4.

CHAPTER 38.

An Act respecting The Temiskaming and Northern Ontario Railway.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Temiskaming and Northern Ontario Railway Act*. 7 Edw. VII. c. 18, s. 1. Short title.

2.—(1) There shall continue to be a Board of Commissioners composed of not more than five nor less than three persons appointed by the Lieutenant-Governor in Council who shall be a body corporate under the name of "The Temiskaming and Northern Ontario Railway Commission," hereinafter referred to as the Commission. Constitution of Commission.
Corporate name.

(2) A majority of the persons so appointed shall form a quorum for the transaction of any business of the Commission. Quorum.

(3) The Commissioners shall hold their respective offices as members of the Commission during the pleasure of the Lieutenant-Governor in Council, and the Lieutenant-Governor in Council may, upon the death, resignation or removal from office of any such persons respectively, and from time to time thereafter, appoint other persons to fill their places during pleasure as aforesaid. Terms of office—Vacancies.

(4) The Lieutenant-Governor in Council may from time to time designate one of the Commissioners to be chairman of the Board. 7 Edw. VII. c. 18, s. 2. Chairman.

3.—(1) Each of the Commissioners shall receive his actual disbursements in discharging his duties in addition to which the Chairman shall receive an honorarium at the rate of \$5,000 per annum, and each of the other Commissioners an honorarium at the rate of \$1,000 per annum. 7 Edw. VII. c. 18, s. 3; 10 Edw. VII. c. 15, s. 1. Remuneration of Commissioners.

(2) The Commission, with the approval of the Lieutenant-Governor in Council, may establish a Land Department to administer town sites and perform such other duties as shall be assigned to it by the Commission; and may with such approval appoint one of the Commissioners to take the charge and over-sight of such Department and pay to such Commissioner while in charge of it such remuneration, in addition to Establishment of Land Department.
Charge of department.

the honorarium aforesaid as the Commission sees fit, not exceeding \$1,750 per annum. 9 Edw. VII. c. 18, s. 1; 1 Geo. V. c. 13, ss. 1, 2.

Vesting of
railway in the
Commission.

4.—(1) The railway and branch lines heretofore authorized to be constructed by the Commission, namely:—

- (a) the main line from North Bay to the junction with the National Transcontinental Railway at Cochrane;
- (b) the Nipissing Junction branch from North Bay to Nipissing Junction;
- (c) the Kerr Lake branch from a point immediately South of Cobalt to Kerr Lake;
- (d) the Elk Lake branch from Earlton to Elk Lake;
- (e) the Charlton branch from Englehart to Charlton;
- (f) the Porcupine branch from Iroquois Falls Junction to Timmins;
- (g) the Iroquois Falls branch from Iroquois Falls Junction to Iroquois Falls;

and the branches, spurs and sidings, telegraph and telephone lines and other works used in connection therewith so far as the same have heretofore been constructed by the Commission, and all other property heretofore acquired by or vested in the Commission under the authority of any former Act shall continue to be vested in the Commission for the purposes herein set forth.

Power to con-
struct spurs
and branches.

(2) Subject to the approval and direction of the Lieutenant-Governor in Council the Commission may construct, complete, maintain and operate such spurs and branches from any of the lines mentioned in subsection 1 as may be deemed necessary, not exceeding twenty miles in length in any one place, and may exercise the like powers with respect to any such spur or branch as it has exercised and may exercise with respect to any of such lines. See 7 Edw. VII. c. 18, s. 4; 9 Edw. VII. c. 18, s. 2; 10 Edw. VII. c. 15, s. 2; 2 Geo. V. c. 13, s. 4.

Approval of
location and
plans.

5. The location of the line of the railway, and of the branches, and the plans of all works proposed, and the by-laws of the corporation shall be subject to the approval of the Lieutenant-Governor in Council. 2 Geo. V. c. 13, s. 1.

Regulations
for fares and
rates.

6.—(1) Subject to the approval of the Lieutenant-Governor in Council the Commission may make regulations fixing the fares and tolls to be charged for all traffic carried upon the railway.

(2) The regulations of the Commission fixing such fares and tolls made before the 16th day of April, 1912, and any alterations or amendments thereof theretofore made, except in so far as they have been altered or amended in accordance with the provisions of this Act, shall be binding upon all persons, whether such regulations have or have not been expressly approved by the Lieutenant-Governor in Council, but the Lieutenant-Governor in Council may at any time alter, amend or repeal any such regulations. 2 Geo. V. c. 13, s. 2.

Effect of
present
regulations.

7.—(1) Subject to the approval and direction of the Lieutenant-Governor in Council, the Commission may enter into an agreement with any railway company to provide and secure such reciprocal running powers, traffic arrangements and other rights over and in respect of the railway of such company and the railway constructed or to be constructed by the Commission as will afford to such company and to the Commission reasonable and proper facilities for mutually exercising such running powers, fair and reasonable traffic arrangements and equitable mileage rates between the Commission and such company.

Agreements
with railway
companies.

(2) Any lease by the Commission of the railways shall be subject to ratification by this Legislature, except a lease made with the approval of the Lieutenant-Governor in Council of a spur or branch not exceeding 10 miles in any one place. 7 Edw. VII. c. 18, s. 6.

Ratification by
legislation.

(3) The contracts and agreements heretofore entered into by the Commission are continued and shall have effect according to the terms thereof.

Existing
agreements.

8. Subject to the approval of the Lieutenant-Governor in Council the Commission may operate the railway or any section thereof by electricity or by any other motive power. 7 Edw. VII. c. 18, s. 7.

Motive
power.

9.—(1) The Commission may purchase land for and erect power houses, warehouses, elevators, docks, stations, workshops and offices, and sell and convey such land as may be found superfluous for any such purpose.

Power
houses, ele-
vators, docks,
vessels, etc.

(2) The Commission may hold and operate as part of the property of the Commission as many steam or other vessels as the Commission deems requisite from time to time to facilitate the carriage of passengers, freight and other traffic in connection with the railway. 7 Edw. VII. c. 18, s. 8.

10. The Commission may erect and maintain all necessary and convenient buildings, stations, depots, wharves, and fixtures, and may from time to time alter, repair or enlarge the same and may purchase and acquire motors, engines, carriages, wagons and other machinery, and contrivances necessary for the working of the railway, and the accommodation,

Buildings
and rolling
stock for
railway.

and use of the passengers, freight and business of the railway. 7 Edw. VII. c. 18, s. 9.

Works for
the produc-
tion of
electricity.

11. The Commission may, subject to the approval of the Lieutenant-Governor in Council, construct, maintain and operate works for the production of electricity, or other motive power for the said railway, and for lighting and heating the rolling stock and other property of the railway, and may from time to time sell or lease any such electricity or other motive power not required for the purposes aforesaid to any person or corporation, and may acquire and hold any property necessary for such purposes. 7 Edw. VII. c. 18, s. 10.

Works for
transmission
of power.

12. The Commission may acquire the right to convey and transmit electric or other power required for the working of the railway, and lighting or heating the same over, through or under land other than the land of the Commission, and may purchase or otherwise acquire the right to lay conduits under, or erect poles or wires on or over such land as may be determined by the commission, and along and upon any of the public highways or across any of the waters in Ontario, by the erection of the necessary fixtures, including posts, piers or abutments for sustaining the cords or wires for such lines, or the conduits for such electricity or other power upon and subject to such agreement in respect thereto as shall first be made between the Commission and any private owners of the land affected. 7 Edw. VII. c. 18, s. 11.

Transfer of
Crown lands
to Commission

13.—(1) The Lieutenant-Governor in Council may by Order in Council transfer to the Commission so much of any of the ungranted land of Ontario as is shown by the report of the engineer appointed under the provisions of this Act to be required for the railway, or for convenient and necessary right of way, sidings, yards, stations, or for the supply for the purposes of the railway of stone, gravel, earth, sand, or water or for other purposes for use in connection with the said railway and works.

(2) Registration of a certified copy of any such Order in Council in the registry office or office of land titles as the case may be for the registry district in which the land is situate shall be deemed to vest and shall vest in the said Commission as trustee for the Province the land described in such Order in Council. 7 Edw. VII. c. 18, s. 12.

Order in
Council of
24th January,
1906, con-
firmed and
land describ-
ed therein
vested in
Commission.

14. The order of the Lieutenant-Governor in Council of the 24th day of January, 1906, vesting in the Commission certain land, and land covered with water in the District of Nipissing, and therein described by metes and bounds is confirmed, and it is declared that the order was intended to vest and did vest in the Commission as and from the passing of the Act, passed in the second year of the reign of His late

Majesty King Edward the Seventh, Chaptered 9, the fee simple in such land and all mining rights therein and thereto absolutely freed from all claims and demands of every nature whatsoever in respect of or arising from any lease or patent of any mining land or mining location at any time granted. See 7 Edw. VII. c. 18, s. 13.

15. The Commission may from time to time subject to the approval of the Lieutenant-Governor in Council appoint an engineer and an accountant for the railway and works, and such other officers and employees as may be necessary for the proper conduct of the business of the Commission, and subject to such approval may prescribe their duties and fix their remuneration. 7 Edw. VII. c. 18, s. 14.

Appointment of officers.

16. Any person entrusted by the Commission with the custody or control of money by virtue of his employment shall give security in the manner and form provided by *The Public Officers Act*.

Security to be given by officers.
Rev. Stat. c. 15.

17.—(1) The Commission shall have in respect of the railway and works, in addition to all the powers, rights, remedies and immunities conferred by this Act, all the powers, rights, remedies and immunities conferred upon any railway company by *The Ontario Railway Act*, or by any general Act of this Legislature affecting railways for the time being in force, but *The Ontario Railway Act* or any other such Act shall not in other respects apply to the railway or be binding upon the Commission. 7 Edw. VII. c. 18, s. 16.

General powers of Commission.

Rev. Stat. c. 185.

Affecting railways.

(2) The Commission may from time to time, at its option in lieu of expropriating land under the provisions of any such general Railway Act, expropriate such easements, rights of user and rights of support as shall be indicated in any notice to be given by the Commission in that behalf, and in any such case the compensation to the owners or other persons interested in any such land shall be reasonable compensation for such easements, rights of user and rights of support.

Expropriation of easements, etc.

(3) The railway of the Commission, including any branch lines, spurs or sidings, may be carried along or across existing highways upon leave therefor having been first obtained from the Ontario Railway and Municipal Board; and sections 118 to 128 of *The Ontario Railway Act*, shall apply to any such occupation of existing highways, and to the construction and use of any such railways carried along or across the same, and to any application for such leave. 9 Edw. VII. c. 18, s. 3.

Carrying railways over highways.

Rev. Stat. c. 185.

18. The railway shall as far as practicable be constructed, equipped and operated with railway supplies and rolling stock made, purchased, or procured in Canada, if they can

Supplies and rolling stock to be purchased in Canada.

be obtained as cheaply and upon as good terms in Canada as elsewhere, having regard to quality and price. 7 Edw. VII. c. 18, s. 17.

Employment of aliens in construction prohibited.

R.S.C. c. 97.

19. No person shall be employed in the construction of the railway and works in contravention of *The Alien Labour Act* or the provisions of any general Railway Act of Ontario respecting the employment of alien labour. 7 Edw. VII. c. 18, s. 18.

Current rate of wages to be paid.

20. The workmen, labourers and servants employed in or about the construction or operation of the railway and works shall be paid such rates of wages as may be concurrently payable to workmen, labourers and servants engaged in similar occupations in the districts in which such railway and works are constructed and operated. 7 Edw. VII. c. 18, s. 19.

Transfer of lands to Commission for town sites, etc.

21.—(1) The Lieutenant-Governor in Council may from time to time by Order in Council transfer to the Commission for town sites portions of the ungranted land of Ontario along the line of railway adjacent to stations or proposed stations, and the registration of a certified copy of any such Order in Council in the registry office, or office of land titles as the case may be for the registry districts in which the land is situate shall vest in the Commission as trustee for Ontario, the land described in any such Order in Council.

Acquiring other lands for same purpose.

(2) The Commission may for the same purpose from time to time acquire other land so situate by the same means as it is authorized to acquire land for right of way and station ground, and shall have all the rights and powers with reference to the acquisition thereof by expropriation or otherwise as it has with reference to the acquisition of land for right of way, but the land acquired for town sites shall not exceed 1,000 acres for any one site.

Powers of Commission as to disposing of lands.

(3) The Commission may from time to time lay out, sell, lease or otherwise dispose of any part of such land as it may think proper, and may take mortgages or other securities for any unpaid purchase money. 7 Edw. VII. c. 18, s. 20.

Making grants to municipalities in which town sites situated.

22. The Commission may from time to time with the approval of the Lieutenant-Governor in Council pay to the corporation of any municipality in which any such town site is situate for the general purposes of such municipality or for any special purpose designated by the Commission such sum or sums as it may from time to time deem proper out of the money received by the Commission from mines, minerals or mining operations in such town site, such payment not to exceed 20 per cent. of the royalty received in any one year, or the sum of \$1,200 in all during any one year, nor to continue after the 31st day of December, 1917. 8 Edw. VII. c. 33, s. 23.

23. The Commission shall be deemed to have always had and shall have authority with the approval of the Lieutenant-Governor in Council from time to time to sell, lease, or otherwise deal with mines, minerals and mining rights upon or under any portion or portions of the right of way, or of the town sites vested or to be vested in the Commission. 7 Edw. VII. c. 18, s. 21.

Minerals and
mining
rights.

24. The laying out whether by plan or otherwise or the dedication in any manner of any land within any town site as or for public streets or highways shall not be deemed to revert in the Crown, or to vest in the corporation of the municipality in which such town site is situate, any mines, minerals or mining rights theretofore granted by the Crown to the Commission or to any other person on or under any such land so laid out or dedicated, but the Commission or such other grantees of the mines, minerals and mining rights on or under the land so laid out or dedicated shall have the right from time to time to carry on mining operations on or under such land or to sell, lease or otherwise deal with the mines, minerals and mining rights on or under such land subject however to the obligation of all parties actually conducting mining operations on or under any such land, whether as owners, lessees, or otherwise, to conduct such mining operations in such way as shall not interfere with public travel upon such streets and highways. 7 Edw. VII. c. 18, s. 23.

Dedication of
highways
not to affect
mining
rights.

25. No such mining operations shall at any time be begun or carried on upon or under any land so laid out or dedicated as public streets or highways until after the person, whether as owner, lessee or otherwise proposing to carry on such mining operations, shall have submitted to the council of the municipality in which such streets or highways are situate proper plans of such proposed mining operations with all necessary specifications and details, nor until such plans have been approved in writing by the engineer of such municipality, or an engineer appointed by the corporation of the municipality for that purpose, and may thereafter be carried on in strict conformity to such plans and not otherwise. 7 Edw. VII. c. 18, s. 24.

Plans to be
submitted
before min-
ing under
highways.

26. A separate account to be called "The Temiskaming and Northern Ontario Railway Account," shall be kept in the Treasury Department of all receipts and expenditures on account of the construction of the railway and of the interest paid during such construction. 7 Edw. VII. c. 18, s. 22.

Account to
be kept in
Treasury
Department.

27. The proceeds of the loan of \$7,000,000 authorized by the Act passed in the fifth year of the reign of His late Majesty King Edward VII. intituled *An Act for raising money on the credit of the Consolidated Revenue Fund of Ontario*, and the proceeds of the loan of \$3,000,000 author-

Application
of proceeds
of loans of
\$7,000,000
and
\$3,000,000.

ized by the Act passed in the sixth year of His said late Majesty's reign intituled *An Act for raising money on the credit of The Consolidated Revenue Fund of Ontario*, shall be placed to the credit of such account, and the Lieutenant-Governor in Council may place to the credit of the account out of the Consolidated Revenue Fund such money as may be required for the construction of the railway and works on such terms as may be prescribed by the Lieutenant-Governor in Council. See 7 Edw. VII. c. 18, s. 25.

Expenditure chargeable to special account.

28. All expenditures on account of construction, including interest paid on capital account during construction and the cost of redeeming treasury bills or other securities issued for the purpose of raising money for construction purposes, shall be charged against the account. 7 Edw. VII. c. 18, s. 26.

Payments out of appropriation to credit of account.

29. The Lieutenant-Governor in Council may direct that such portions of the sums appropriated to the construction of the railway as may be required from time to time by the Commission for construction purposes on monthly or other estimates may be placed to the credit of the Commission in such account. 7 Edw. VII. c. 18, s. 27.

Application of receipts of Commission.

30. The income of the Commission from the railway, and all money received by it in respect of any sale, lease or other disposal of land in town sites, and all money received by it in respect of the sale or lease of mines, minerals or mining rights, including all rents, renders and royalties, shall be applied as follows: to the necessary operating expenses of said railway, and of all works necessary to the preservation, improvement and maintenance of the railway, and to the protection of the rights of the Commission in town sites and mines, minerals and mining rights, and to the payment of the remuneration and expenses of the Commissioners, and the salaries of officers and others employed by the Commission and other incidental expenses; and the surplus from time to time then remaining shall be paid over by the Commission to the Treasurer of Ontario at such times and in such manner as the Lieutenant-Governor in Council shall direct, and the same shall thereupon form part of the Consolidated Revenue Fund. 7 Edw. VII. c. 18, s. 28.

Accounts to be kept by Commission.

31. The Commission shall cause books to be provided and kept and true and regular accounts to be entered therein of all sums of money received and paid, and of the several purposes for which the same were received and paid, which books shall at all times be open to the inspection of any member of the Commission and of the Treasurer of Ontario, and of any person appointed by the Commission or Treasurer for that purpose and of any other person appointed by the Lieutenant-Governor; and any member of the Commission, and any of such persons may take copies of or extracts from such books. 7 Edw. VII. c. 18, s. 29.

32. Sections 26 and 27 of *The Audit Act* shall apply to the accounts of the Commission in respect of receipts and expenditures. 7 Edw. VII. c. 18, s. 30. Application of Rev. Stat. c. 23.

33. The Commission shall make an annual report for the information of the Assembly setting forth the receipts and expenditures of the year, and such other matters as may appear to them to be of public interest in relation to the said railway or works, or as the Lieutenant-Governor in Council may direct. 7 Edw. VII. c. 18, s. 31. Annual report.

34. No member of the Commission nor any officer or employee thereof shall make or enter into any contract with the Commission, or be pecuniarily interested directly or indirectly in any contract or work in regard to which any portion of the money under the control of the Commission is being or is to be expended. 7 Edw. VII. c. 18, s. 32. Members of Commission, etc., not to be interested in contracts.

35. No action shall be brought against the Commission or against any member thereof for anything done or omitted in the exercise of his office without the consent of the Attorney-General of Ontario. 7 Edw. VII. c. 18, s. 34. Actions not to be brought without consent of Attorney-General.

CHAPTER 39.

An Act to provide for the Transmission of Electrical Power to Municipalities.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PART I.—GENERAL.

Short title.

1. This Act may be cited as *The Power Commission Act*.
7 Edw. VII. c. 19, s. 1.

*The Commission and its Powers.*Appointment
of Hydro-
Electric
Power
Commission.

2. For the purposes hereinafter mentioned there shall continue to be a Commission of three persons appointed by the Lieutenant-Governor in Council, two of whom may be members and one of whom shall be a member of the Executive Council; and the Commission shall continue to be a body corporate under the name of "The Hydro-Electric Power Commission of Ontario," hereinafter called the Commission.
7 Edw. VII. c. 19, s. 2.

Chairman.

3. The Lieutenant-Governor in Council may appoint one of the members to be Chairman of the Commission, and two members shall form a quorum. 7 Edw. VII. c. 19, s. 3.

Quorum.

Tenure of
office.

4. Every person appointed to the Commission shall hold office during pleasure; and the Lieutenant-Governor in Council, upon the death, resignation or removal from office of any member of the Commission, may appoint some other person to fill his place. 7 Edw. VII. c. 19, s. 4.

Vacancies.

Salary of
Chairman.

5.—(1) The Chairman of the Commission shall be paid out of such money as may be appropriated by this Legislature for the general purposes of the Commission, such annual salary or other remuneration not exceeding \$6,000 per annum as may be determined by the Lieutenant-Governor in Council.

Seat not
vacated, nor
penalties
incurred
thereby.
Rev. Stat.
c. 11.

(2) Notwithstanding anything contained in *The Legislative Assembly Act* the election of the Chairman, if a member of the Assembly, shall not by reason of such salary or remuneration or the acceptance thereof be avoided, nor shall he vacate or forfeit his seat or incur any of the penalties imposed by that Act for sitting and voting as a member of the Assembly.

(3) The members of the Commission, other than the Chairman or a member of the Assembly, shall be paid out of such money as may be appropriated by this Legislature for that purpose such annual salary or other remuneration as may be fixed by the Lieutenant-Governor in Council. 2 Geo. V. c. 14, s. 2.

Salaries of other members of Commission.

6.—(1) The Commission may appoint a chief engineer, an accountant and a secretary, and such other engineers, accountants, officers, servants and workmen as may be deemed requisite.

Appointment of officers by Commission.

(2) The salaries or other remuneration of the persons so appointed shall be fixed by the Commission, subject to the ratification of the Lieutenant-Governor in Council, and shall be payable out of such money as may be appropriated by this Legislature for that purpose. 7 Edw. VII. c. 19, s. 6.

Salaries of officers, etc.

7. The Commission may from time to time report to the Lieutenant-Governor in Council, designating

Report of Commission as to acquiring works, etc.

(a) the land, waters, water privileges or water powers or the land, works, machinery and plant, or portion thereof, of any person owning or holding under lease or otherwise, or developing, operating or using a water privilege or water power, or transmitting electrical or other power or energy in Ontario, which in the opinion of the Commission should be purchased, acquired, leased, taken, expropriated, developed, operated or used by the Commission for the purposes of this Act; or

(b) the quantity of the product of any person generating electrical power or energy in Ontario or bringing such power or energy into Ontario for use or transmission therein which the Commission requires for the purposes of this Act. 7 Edw. VII. c. 19, s. 7.

8. The Lieutenant-Governor in Council, upon the report of the Commission recommending the same, may authorize the Commission to

Powers which may be given to Commission.

(a) acquire by purchase, lease or otherwise, or, without the consent of the owner thereof or of any person interested therein, enter upon, take possession of, expropriate and use the land, waters, water privileges, water powers, works, machinery and plant of any person owning, holding under lease or otherwise, or developing, operating or using the same for generating, or adapted for generating electrical power or energy or for the transmission thereof in Ontario; and develop and use the same for any of the purposes of this Act; 7 Edw. VII. c. 19, s. 8, *part*;

To acquire lands, water powers and works.

To acquire
easements.

(b) acquire by purchase, lease or otherwise or, without the consent of the owner thereof or person interested therein, enter upon, take possession of, appropriate and use a right or easement to construct, erect, maintain and operate transmission lines with all other plant, appliances and equipment required therefor to transmit electricity, at such voltage as the Commission may determine, through, over, under, along or across any land and premises, public highway or public place, stream, water, water-course, bridge, viaduct or railway; 9 Edw. VII. c. 19, s. 10;

To acquire
plant for
transmission
of power.

(c) construct, maintain and operate, and acquire by purchase, lease or otherwise, or, without the consent of the owner thereof or of any person interested therein, enter upon, take possession of, appropriate and use all erections, machinery, plant and other works and appliances for the transmission, supply and distribution of electrical power or energy; and conduct, store, transmit and supply electrical power or energy for the purposes of this Act, and, with lines of wires, poles, conduits, motors or other conductors or devices, receive, conduct, convey, transmit, distribute, supply or furnish such electrical power or energy to or from any person at any place through, over, under, along or across any land, public highway or public place, stream, water, watercourse, bridge, viaduct or railway, and through, over or under the land of any person, and enter upon any land upon either side of such lines or conduits and fell or remove any tree or limb thereof, or obstruction, which, in the opinion of the Commission, it is necessary to fell or remove; 7 Edw. VII. c. 19, s. 8, *part*; 2 Geo. V. c. 14, s. 3, *part*;

To contract
for supply
of power to
Commission.

(d) contract with any person generating, transmitting or distributing electrical power or energy, or proposing so to do, to supply electrical power or energy to the Commission; and require any person generating, transmitting or distributing electrical power or energy to supply so much thereof as the Commission may require; 7 Edw. VII. c. 19, s. 8, *part*;

To flood
lands and
improve
water
powers.

(e) enter upon, take and use, without the consent of the owner thereof, any land upon which any water power or privilege is situate, or any lake, river, stream or other body of water, which in the opinion of the Commission is capable of improvement or development for the purpose of providing water power, and construct such dams, sluices, canals, raceways and other works as may be

deemed proper or expedient for that purpose, and flood and overflow any land as may be deemed necessary for the purpose of providing storage of the water or for any other purpose in connection with such works, and contract with any municipal corporation, company or individual for the use of any of the improvements or works so made, on such terms and conditions as may be agreed on, and charge such tolls for the use of the water power or improvements or works by any municipal corporation, company or individual as the Commission may deem reasonable, having regard to the cost of acquiring such land and of the construction, maintenance and operation of such improvements or works;

- (f) acquire by purchase or expropriate any plant, machinery, appliances, wires, poles and other equipment, and the land occupied by or used in connection with the same or any part thereof, used or intended for the distribution of electrical power or energy in a municipality, the corporation of which has entered into an agreement with the Commission for the supply of electrical power or energy, and contract for the sale and transfer to such municipal corporation of such plant, equipment and land upon such terms and for such price, not being less than the price paid by the Commission, with the expenses in connection with such purchase or expropriation added thereto, as may be agreed upon; but if part only of the property is taken the damage done to the property by the severance shall be taken into consideration in determining the compensation. 2 Geo. V. c. 14, s. 3, *part*.

To acquire distributing plant.

9. Whenever the Commission is authorized by the Lieutenant-Governor in Council to exercise any of the compulsory powers mentioned in section 8 the Commission in respect thereof shall have the powers conferred on the Minister of Public Works and shall proceed in the manner provided by *The Ontario Public Works Act* where the Minister of Public Works takes land or property for the use of Ontario, and the provisions of that Act shall, *mutatis mutandis*, apply. 7 Edw. VII. c. 19, s. 9.

Powers of Commission as to expropriation; how exercised.

Rev. Stat. c. 35.

10.—(1) The powers mentioned in clause (b) of section 8 may be exercised without any pre-requisite or preliminary action or proceeding, and without any other sanction or authority than is conferred by this Act, and shall include the right to retain possession for such time as the Commission may deem proper and under agreement with the owner or person interested, or without his consent, of such right, title, privilege, easement or interest in, over, upon or

Extent of powers of entry for construction of line, etc.

in respect of or relating to any land as to the Commission may seem desirable or expedient. 10 Edw. VII. c. 16, s. 1.

Right of owner to compensation.

(2) Whenever the Commission acts or has acted under the authority conferred by clause (b) of section 8 compensation shall be made to the owner and all persons interested for all damage to land necessarily resulting from the exercise of the powers granted to the Commission by that clause; and in fixing such compensation regard shall in all cases be had to the nature and extent of the estate, right, privilege, easement or interest which the Commission decides to take and acquire in, over, upon or in respect of the land, and the compensation shall be based thereon.

Claims for compensation, how dealt with.

(3) The claimant shall present his claim for compensation to the Commission in the manner provided for presentation of claims under section 40 of *The Ontario Public Works Act*, and the provisions of that section shall apply in respect of such claim, and in the event of an agreement not being arrived at the amount of the compensation may be determined by arbitration under *The Ontario Public Works Act*, in which case the provisions respecting arbitration contained in that Act shall, *mutatis mutandis*, apply.

Rev. Stat. c. 35.

Right to arbitration under Rev. Stat. c. 65.

(4) Should the claimant so elect by notice in writing within one month from the entry on and taking possession by the Commission the amount of the compensation shall be determined in the manner provided by *The Arbitration Act* and subject to the provisions thereof. 10 Edw. VII. c. 16, s. 2.

Payment or disposition of compensation. Rev. Stat. c. 35.

(5) When the Commission has agreed on the purchase price or rental, or the amount of compensation has been determined, all the provisions of *The Ontario Public Works Act* as to the payment or other disposition of the money payable in respect of the estate, right, title or interest purchased, leased or taken by the Commission and as to the vesting of such estate, right, easement or interest, and the title thereto, in the Commission shall, *mutatis mutandis*, apply. 10 Edw. VII. c. 16, s. 3.

Abandonment of lands after expropriation.

11.—(1) Where any of the compulsory powers mentioned in section 8 are exercised with respect to land and no entry on or use of the land taken has been made, except for the purpose of survey or examination, the Commission at any time before the expiration of three months from the date of the award may by writing under the hand of the Chairman and the seal of the Commission, registered in the proper registry or land titles office, declare that the land or any part thereof is not required and is abandoned by the Commission; and thereupon the land declared to be abandoned shall revert in the person from whom it was taken or in those entitled to claim under him.

Total abandonment.

(2) Where the land taken, or any part thereof, is abandoned the person from whom it was taken shall be entitled

to all damages sustained and all costs incurred by him in consequence of the taking and abandonment; and where part only of the land is abandoned the fact of such abandonment and the damages, if any, sustained in consequence of that which is abandoned having been taken, and all the other circumstances of the case shall be taken into account in determining the amount to be paid to any person claiming compensation, and the amount of the damages shall be determined in the manner provided by *The Ontario Public Works Act*, and if a reference as to compensation is pending, shall be determined on such reference. 2 Geo. V. c. 14, s. 4.

Partial abandonment.

Rev. Stat. c. 35.

12. The compulsory powers conferred by this Act shall extend to land, works, rights, powers, privileges and property notwithstanding that the same are or may be deemed to be devoted to a public use or that the owner thereof possesses the power of taking land compulsorily. 7 Edw. VII. c. 19, s. 10.

Extent of powers of expropriation.

13. Whenever required by the Lieutenant-Governor in Council so to do the Commission shall enquire into, examine and investigate water powers or water privileges in Ontario and report upon the value and capacity thereof, with such other information as the Lieutenant-Governor in Council may require; and every report of the Commission shall be laid before the Assembly at its next ensuing session. 7 Edw. VII. c. 19, s. 11.

Commission to report on water powers, etc., when required.

14. The Lieutenant-Governor in Council may from time to time raise by way of loan in the manner provided by *The Provincial Loans Act* such sums as the Lieutenant-Governor in Council may deem requisite for the purposes of this Act; and such sums may be paid over to the Commission and shall be accounted for and audited in the manner provided with respect to the management of the public revenue and public accounts. 7 Edw. VII. c. 19, s. 20.

Government authorized to raise funds necessary for work of Commission. Rev. Stat. c. 21.

15. All sums received by the Commission shall be accounted for and paid over to the Treasurer of Ontario to be applied from time to time in the retirement of the securities given by Ontario for any debt incurred under the authority of this Act. 7 Edw. VII. c. 19, s. 21.

Commission to account for moneys received—application of same.

16. Without the consent of the Attorney General no action shall be brought against the Commission or against any member thereof for anything done or omitted in the exercise of his office. 7 Edw. VII. c. 19, s. 23.

No action against Commission without consent of Attorney-General.

17. Neither the Province nor the Commission nor any member thereof shall incur any liability by reason of any error or omission in any estimates, plans or specifications prepared or furnished by the Commission. 7 Edw. VII. c. 19, s. 24.

Non-liability for errors in estimates, etc.

Supply of Power to Municipalities and Railway and Distributing Companies.

Application to Commission for supply of power municipal corporation.

18.—(1) Any municipal corporation may apply to the Commission for the transmission and supply to the corporation of electrical power or energy for the use of the corporation and the inhabitants of the municipality for lighting, heating and power purposes or for any or either of such purposes or for any of the purposes mentioned in section 20.

Existing contracts binding.

(2) All contracts for such transmission and supply heretofore entered into between the Commission and any municipal corporation shall continue to be binding on the parties thereto according to the terms thereof and subject to the provisions of this Act.

Information and estimates to be supplied by commission.

(3) The Commission shall thereupon furnish to the corporation a statement of the maximum price per horse-power at which the electrical power or energy will be supplied at the point of development or of its delivery to the Commission, and an estimate of the cost of constructing or providing a transmission line by means of which the amount of electrical power or energy required by the corporation is to be supplied and of maintaining the same, and may furnish to the corporation plans and specifications of the works, plant, machinery and appliances necessary for the distribution of such power or energy by the corporation and an estimate of the cost thereof, and such other information as the Commission may deem advisable.

Provisional contract.

(4) The council of the municipal corporation may thereupon enter into a provisional contract with the Commission for the supply of electrical power or energy for the purposes mentioned in this Act. 7 Edw. VII. c. 19, s. 12.

Submission of provisional contract to ratepayers. Rev. Stat. c. 192.

(5) The provisional contract shall not be binding upon the corporation unless and until a by-law approving the same has been submitted to and has received the assent in accordance with the provisions of *The Municipal Act* of the electors qualified to vote on money by-laws; and the estimates of the Commission or a summary thereof and a copy of the provisional contract shall be published with or form part of the by-law.

Execution of contract.

(6) After the provisional contract has received the assent of the electors and has been executed by the corporation and approved by the Lieutenant-Governor in Council the Commission may carry out and execute the same and shall have power and authority to do all acts necessary for that purpose. 7 Edw. VII. c. 19, s. 13.

Municipality may make contracts when authorized by vote of electors.

(7) Where a municipal corporation which has not heretofore entered into a contract for a supply of power applies for such supply, and a question has been submitted to the vote of the electors of the municipality in accordance with

the provisions of *The Municipal Act* as to a supply of electric power from the Commission, and the electors have voted in favour of a supply from the Commission, the council of the corporation of such municipality may authorize the entering into and such corporation may enter into a contract with the Commission in such form as may be approved by the Lieutenant-Governor in Council without submitting a by-law approving the same for the assent of the electors as provided by subsection 4, and when executed such contract shall be legal, valid and binding. 9 Edw. VII. c. 19, s. 11.

Rev. Stat.
c. 192.

19.—(1) The trustees of a police village shall for the purposes of this Part be deemed a municipal corporation and may exercise all the powers conferred upon municipal corporations by this Part, and may enter into a contract with the Commission for the supply of electrical power or energy as provided by this Act.

Contracts
with
trustees of
police village.

(2) The council of the township or the councils of the townships in which the police village is situate, upon the request of the police trustees, shall submit the by-law, or the question as to the supply of electrical power or energy provided for by section 18, to a vote of the electors of the police village qualified to vote thereon, and shall upon the like request issue debentures as provided by this Act, and levy and collect a special rate upon the rateable property in the police village for the payment thereof. 1 Geo. V. c. 14, s. 12, *part*; 2 Geo. V. c. 14, s. 5.

Submission
of By-law
in Police
Village.

(3) The council of the township in which the police village or any part thereof is situate shall annually levy by special rate upon the rateable property in the police village, or in that part of the police village situate in the township, the amounts required to meet the payments to be made to the Commission. 1 Geo. V. c. 14, s. 12, *part*.

Township
to levy rates.

20.—(1) In addition to the powers conferred by this Act a municipal corporation, which has entered into a contract with the Commission for the supply of electrical power or energy, shall have and may exercise in respect of such power or energy all the powers which are by *The Public Utilities Act* or *The Municipal Act* conferred upon corporations in respect to light and heat, and all the powers which are conferred upon corporations by the last mentioned Act for contracting debts for any purpose within the jurisdiction of the council thereof, and also the power to expropriate land, making compensation therefor under the provisions of the said last mentioned Act. 7 Edw. VII. c. 19, s. 14 (1).

Powers of
contracting
municipality
as to sup-
plying light,
heat and
power.
Rev. Stat.
c. 204.
Rev. Stat.
c. 192.

(2) The council of a municipal corporation may, if they see fit, submit to the electors a by-law providing for borrowing, by the issue of debentures, the money required for any of the purposes mentioned or referred to in sections 18 and 19 and in this section at the same time as such council sub-

Made of
submitting
by-law to
electors.

mits to the electors a by-law approving of a provisional contract, or a question as to supply of electrical power under section 18, and such by-law for borrowing money may be finally passed either before or after such corporation has entered into a contract with the Commission for the supply of electrical power or energy, but the debentures authorized by such by-law shall not be issued until the corporation has entered into a contract with the Commission for the supply of such electrical power or energy. 2 Geo. V. c. 14, s. 6.

Supplying
power out-
side of
municipality.

(3) A municipal corporation which has entered into a contract with the Commission under this Act may from time to time, with the approval of the Commission, contract with any other municipal corporation or with any person for the supply or distribution of electrical power or energy in any other municipality, and such other municipal corporation shall have authority to enter into the contract; but a municipal corporation shall not exercise the power conferred by this section in another municipality without the consent of the council thereof. 7 Edw. VII. c. 19, s. 14 (3).

Supplying
power to
railways and
distributing
companies.

21.—(1) Subject to the approval of the Lieutenant-Governor in Council the Commission may contract from time to time with a railway company or a distributing company or with any other corporation or person for the supply of electrical power or energy.

Profits to be
applied in re-
ducing cost
of maintain-
ance to muni-
cipalities.

(2) Any net profit made by the Commission in supplying power under the next preceding subsection, after making provision for the cost of acquiring or constructing and of maintaining the works by means of which the power or energy is supplied, shall be applied in payment of the cost of maintaining the works acquired or constructed and operated by the Commission.

Agreements
for use of
right of way
of railway
companies.

(3) The Commission may from time to time, with the approval of the Lieutenant-Governor in Council, contract with a railway company or power or transmission company for the use of its right of way and property for the erection of works and other constructions for transmitting electrical power or energy. 7 Edw. VII. c. 19, s. 16.

Cost of
works to be
borne by
muni-
cipalities.

22. The expenditure of the Commission upon any works, undertaken under the provisions of this Act, shall be repayable to the Commission by the municipal corporations which have entered into contracts with the Commission. 7 Edw. VII. c. 19, s. 17.

Additional
annual pay-
ments.

23. In addition to the price per horse-power payable by any municipal corporation under the terms of a contract entered into with the Commission, which shall be the cost of the power to the Commission at the point of development, or of its delivery to the Commission, the corporation shall annually pay to the Commission its proportion as adjusted by the Commission of

- (a) interest at the rate of four per centum per annum upon the money expended by the Commission on capital account in the construction or purchase of the works,
- (b) an annual sum sufficient to form in thirty years a sinking fund for the retirement of the securities issued by Ontario under this Act for the payment of the cost of the works, and
- (c) line loss and the cost of operating, supervising, maintaining, repairing, renewing and insuring the works. 7 Edw. VII. c. 19, s. 18; 2 Geo. V. c. 14, s. 7.

24. The Commission shall annually adjust and apportion the amounts payable by municipal corporations under the next preceding section. 7 Edw. VII. c. 19, s. 19.

Apportionment of amounts payable by municipalities.

PART II.

SUPPLY TO INDIVIDUAL USERS.

25. In this Part,

Interpretation.

“Corporation” shall mean the corporation of a city, town, township or village municipality. 1 Geo. V. c. 14, s. 2, *part*.

“Corporation.”

26.—(1) Any one or more of the ratepayers in a municipality the corporation of which has not entered into a contract with the Commission under Part I. may apply to the corporation requesting it to obtain from the Commission a supply of electrical power or energy for the use of such ratepayer or ratepayers for lighting, heating and power purposes, or for any of such purposes. 1 Geo. V. c. 14, s. 3.

Application for supply of power to municipality for use of particular ratepayer.

(2) The application shall be in writing signed by the applicants and shall state the lots or parts of lots owned or occupied by each of them and the purposes for which the electrical power or energy is required. 1 Geo. V. c. 14, s. 4.

Form of application.

27.—(1) The council of the corporation shall thereupon request the Commission to supply the electrical power or energy for the purposes mentioned in the application. 1 Geo. V. c. 14, s. 5.

Request for supply.

(2) Upon such request the Commission shall furnish to the corporation an estimate of the maximum cost per horsepower at which the electrical power or energy will be supplied at the point of development or of its delivery to the Commission, and an estimate of the cost of constructing and providing a transmission line by means of which the amount

Estimates, etc., to be furnished by Commission.

of electrical power or energy required is to be supplied and of maintaining the same, and may furnish to the corporation plans and specifications of the works, plant, machinery and appliances necessary for the distribution of such power or energy by the corporation to the applicants, and an estimate of the cost thereof and such other information as the Commission may deem advisable. 1 Geo. V. c. 14, s. 6.

By-law
authorizing
contract
with Com-
mission.

(3) Within one month after the delivery of the statement and estimates mentioned in the next preceding subsection the council shall, at a special meeting called for that purpose, of which notice shall have been given to each of the applicants, consider the statement and estimates furnished by the Commission, and, with the consent of the applicants or such of them as shall signify their desire to enter into a contract for the supply of electrical power or energy by the Commission, the corporation, without submitting the same to a vote of the electors and without any of the other formalities required in the case of a by-law passed under Part I., may pass a by-law for entering into a contract with the Commission for the supply of the electrical power or energy required by the applicants, and may enter into a contract with the Commission for that purpose. 1 Geo. V. c. 14, s. 7.

Issue of
debentures.

(4) The by-law may provide for the issue of debentures of the corporation, payable within twenty years from the issue thereof, to meet the cost of construction and installation of the works, plant, machinery and appliances necessary for the distribution of the electrical power or energy, and for the levying of a special rate for payment of principal and interest in the manner provided by *The Municipal Act*. 1 Geo. V. c. 14, s. 10.

Rev. Stat.
c. 192.

Annual
payments by
corporation.

28. All the provisions of Part I., as to the annual payments to be made by corporations which have entered into contracts with the Commission, shall apply to a contract entered into under this Part. 1 Geo. V. c. 14, s. 8.

Admission of
further sub-
scribers.

29. The contract may provide for the admission from time to time of further subscribers, or for the making of a contract between the corporation and the Commission under Part I., and the readjustment thereupon of the amounts payable annually to the Commission and of the amounts payable annually by the subscribers in such manner as may be agreed upon or determined by arbitration or otherwise. 1 Geo. V. c. 14, s. 9.

Amount pay-
able by
applicants.

30. The amount payable by the applicants in each year, for the electrical power or energy supplied to them, shall be sufficient to recoup the municipality the amount required to pay the principal and interest of any debentures issued and to meet the annual payments required to be made to the Commission as provided by Part I., and in default of pay-

ment any amount due to the corporation under this section may be entered on the collector's roll and collected in the same manner as other taxes. 1 Geo. V. c. 14, s. 11.

PART III.

CONTROL AND REGULATION OF WORKS BY COMMISSION.

31. In this and the three following sections,

Interpretation.

- (a) "Corporation" shall mean and include a municipal corporation and incorporated company or an individual or firm duly authorized by municipal law or agreement to construct and operate works for conducting, furnishing or distributing electricity for light, heat or power purposes in, under or upon any highway, and shall include any board or commission incorporated or unincorporated acting on behalf of a municipal corporation or of the inhabitants of a municipality; "Corporation."
- (b) "Highway" shall include street, lane, road, square or other public communication; "Highway."
- (c) "Works" shall include wires, pipes, poles, conduits, ducts and other fixtures, appliances or apparatus. 1 Geo. V. c. 15, s. 2; 2 Geo. V. c. 14, s. 10. "Works."

32.—(1) Where a corporation has constructed or desires to construct works for conducting, furnishing or distributing electricity for light, heat or power purposes, in, under or upon any highway, or part of highway, in, under or upon which any other corporation has already constructed and has works for the like purposes, or any of them, upon the application of the first mentioned corporation and after notice to the other and hearing any objections which it may make the Commission may, if it is of opinion that the location and mode of construction of such works are proper, approve of the same; and all works which such first mentioned corporation has constructed or may thereafter construct the location and mode of construction of which have been so approved shall be deemed to have been constructed under statutory authority and to be lawfully constructed and may be maintained and operated by such corporation without its incurring any liability to any other corporation in respect of the construction, maintenance or operation of such works, except that provided for by section 33, any statute or law to the contrary notwithstanding. Approval of distributing works by the Commission.

(2) Such approval may be given subject to such conditions as the Commission may deem necessary to prevent injury to the works of the other corporation, or to such other corporation and its servants and workmen in maintaining, repairing and operating them. Approval upon conditions.

Insulation.

(3) Where the Commission is of opinion that it is necessary or expedient, in order to prevent danger from contact between the wires of different corporations or from any other cause, that insulators or other appliances should be affixed to the poles of either corporation, or that the wires of either of them should be attached to such insulators or other appliances, the Commission may authorize or direct such insulators or other appliances to be so affixed and such wires to be so attached in such manner as the Commission may deem best calculated to prevent such danger; and anything done by either corporation pursuant to such authority or direction shall be deemed to be lawfully done.

Work to be done at expense of initiating corporation.

(4) Anything authorized or directed to be done under the provisions of subsection 3 shall be done at the expense of a corporation constructing the works in a locality in which works have already been constructed by another corporation and under such supervision as the Commission may direct.

Powers exercisable from time to time.

(5) The powers conferred by this section may be exercised from time to time as occasion may require.

Application to works already constructed.

(6) The provisions of this section shall apply to works of a corporation constructed before the 24th day of March, 1911. 1 Geo. V. c. 15, s. 3.

Claims for damages by one corporation against another.

33.—(1) If any damage or injury is done to the works of a corporation or any of them, or is occasioned in the maintenance or operation of them by reason of the works of another corporation or any of them being constructed or operated in closer proximity to the works of such first mentioned corporation than, but for the provisions of section 32, would have been lawful no action shall lie in respect thereof, but the corporation doing such damage or injury shall make due compensation therefor, and any question or dispute as to such damage or injury having been so done or occasioned, or as to the amount of the compensation, shall be determined by arbitration, and the provisions of *The Municipal Act* with respect to arbitration in the case of claims against municipal corporations shall apply *mutatis mutandis* to the procedure upon an arbitration under this section.

Rev. Stat. c. 192.

Notice of claim.

(2) The corporation claiming damages shall, within one month after the expiration of any calendar year in which it claims that any such damage or injury has been so done or occasioned, give notice in writing to the other corporation of its claim and of the particulars thereof, and upon failure to do so the right to compensation in respect of the damage or injury done or occasioned during that calendar year shall be forever barred. 1 Geo. V. c. 15, s. 4. *Amended.*

Exclusive jurisdiction of Commission.

34. The Commission shall have exclusive jurisdiction as to all matters in respect of which authority is, by the next preceding three sections, conferred upon it, and nothing done

by the Commission within its jurisdiction shall be open to question or review in any action or proceeding or by any court. 1 Geo. V. c. 15, s. 6.

35. No court shall have authority to grant or shall grant an injunction or other order restraining, either temporarily or otherwise, the construction, maintenance or operation of any works the location and mode of construction of which have been approved by the Commission if the same are being, or have been, constructed in the place and according to the mode which have been so approved. 1 Geo. V. c. 15, s. 7.

Jurisdiction
of courts
ousted.

36.—(1) Upon the complaint in writing of any municipal corporation, company or person that any municipal corporation, company or person receiving power from the Commission is charging for electric lighting or heating or for electrical power or energy a rate which is excessive or unfair, or that any municipal corporation is making use of the power conferred upon it by this Act for the purpose of granting a bonus by supplying power, light or heat below cost to manufacturers or others, the Chairman of the Commission may appoint a time and place at which the Commission or some member thereof will hear and determine the matter of the complaint; and such notice of the appointment as the Chairman may direct shall be given by the secretary of the Commission to such persons as the Chairman may direct.

Complaints
as to rates
charged for
light, heat
or power.

(2) At the time and place appointed the Commission or a member thereof shall hear and determine the matter of the complaint and may dismiss or allow the complaint and may direct what rates shall be charged, and may regulate and determine the rates to be charged, and may direct the amendment of any by-law or agreement accordingly, or may make such order as may seem meet.

Hearing of
complaints.

(3) The Commission or the member thereof hearing the complaint shall have all the powers authorized to be conferred upon a Commissioner appointed under *The Public Enquiries Act*. 7 Edw. VII. c. 19, s. 22 (1)-(3).

Powers of
Commission
on enquiry.

Rev. Stat.
c. 18.

37.—(1) The Commission may make regulations as to Regulations.

(a) the construction, operation and inspection of the works, plant, machinery, apparatus, appliances and equipment for the transmission, distribution, connection, installation and use of electrical power or energy by municipal corporations, and by any railway, street railway, electric lighting, power or transmission company, or by any other company or individual, transmitting, distributing, installing, or using electrical power or energy, or whose undertaking, works, or premises are connected with any plant for transmission or distribution of electrical power or energy; or

as to equip-
ment.

As to inspection.

(b) requiring the appointment of inspectors by the corporation of any municipality for the purpose of enforcing the due observance of such regulations.

Ordering changes in plans and equipment.

(2) The Commission may at any time order the installation, removal or alteration of any works, plant, machinery, apparatus, appliances or equipment as in the opinion of the Commission may be necessary for the safety of the public or of workmen, or for the protection of property against damage by fire or otherwise. 2 Geo. V. c. 14, s. 9, *part*.

Rates.

38.—(1) The rates chargeable by any municipal corporation generating or receiving and distributing electrical power or energy shall at all times be subject to the approval and control of the Commission; and the rates charged by any company or individual receiving power from the Commission for the supply of electrical power or energy shall at all times be subject to such approval and control.

Prescribing system of book-keeping, etc.

(2) The Commission may prescribe a system of book-keeping and keeping accounts of the assets, liabilities, revenue and expenditure of any municipal corporation or municipal commission and may require from such municipal corporation or commission such returns and statements as the Commission may deem proper, and may extract from such books, returns and statements such information as in the opinion of the Commission may be useful for publication and may embody the same in the reports of the Commission.

Jurisdiction of Ontario Railway and Municipal Board.
Rev. Stat.
c. 186.

(3) Section 58 of *The Ontario Railway and Municipal Board Act* shall not apply to municipal corporations or commissions which are subject to the provisions of this section so far as the said section relates to the development or distribution of electrical power or energy. 2 Geo. V. c. 14, s. 9, *part*.

Where accounts of a corporation show a surplus.

39. Whenever it appears from the accounts of a municipal corporation or municipal commission that after providing for any payments required to be made on account of principal or interest of any debentures issued for the construction and equipment of works and plant for the production, development or distribution of electrical power or energy, and, in the case of a municipal corporation or municipal commission receiving electrical power or energy from the Commission for distribution, after providing for the payments required by this Act, that there is a surplus at the credit of the municipal corporation or municipal commission, such surplus shall be applied and disposed of, in such manner as the Commission may by general regulation or special order direct,

(a) in the reduction of any indebtedness incurred with respect to the construction and equipment of such works and plant; or

- (b) in the maintenance, repair or renewal thereof; or
- (c) in the extension of such works and plant; or
- (d) in the formation of a fund to be used at a future time for any of such purposes. 2 Geo. V. c. 14, s. 9, *part*.

40. A municipal corporation or municipal commission and any company or individual neglecting or refusing to obey and carry out any order or direction of the Commission or of a member thereof made under section 36, or of the Commission made under sections 37, 38 or 39, in addition to any other liability, shall forfeit to His Majesty for the use of Ontario the sum of \$100 for every day during which such neglect or refusal shall continue. 2 Geo. V. c. 14, s. 9, *part*.

Orders of Commission.

Penalty for disobeying.

41.—(1) Where the Commission is of opinion that it is necessary or expedient for the protection of life or property, or for the convenience of the public, that the use of overhead lines upon any highway or part thereof in a city or town, including the wires of telegraph, telephone, electric light, heat or power companies, should be discontinued the Commission may so direct, and, upon such terms and subject to such conditions as it may prescribe, may require that such wires be placed and carried in underground conduits to be constructed and maintained in accordance with the directions and to the satisfaction of the Commission, and may abrogate any right to carry lines on poles in such city or town which may have been given by any Act or by any municipal by-law, license or agreement.

Ordering wires underground.

(2) In this section and in sections 42 to 46,

Municipal wires.

(a) "Lines" shall mean and include the wires, cables or other conductors used for the purpose of conveying or distributing electricity or electrical power or energy, for telegraph, telephone, or electric light, heat or power purposes;

Interpretation "lines."

(b) "Company" shall include a municipal corporation or municipal commission, a partnership and an individual, owning, leasing, using or controlling lines in a city or town. 2 Geo. V. c. 14, s. 9, *part*.

"Company."

42. Where the corporation of the city or town is willing to undertake the construction of a tunnel or conduits or other system for carrying lines underground in any highway or part thereof the Commission, upon such terms and subject to such conditions as it may prescribe, may require all companies whose lines are carried overhead upon any such highway or public communication to make use of such tunnel or conduits or other system for the purpose of carrying their lines and to pay to the corporation such compensation for the

Construction of tunnel by municipal corporation.

use thereof as may be agreed upon or as the Commission may determine; and such compensation may be either a lump sum or a sum to be paid annually or periodically as the Commission may determine and direct. 2 Geo. V. c. 14, s. 9, *part*.

Powers of
corporation
of city or
town.

43. Where the corporation of a city or town desires to construct a tunnel, conduits or other system for the purpose mentioned in the next preceding section it shall be lawful for the corporation to do so and to exercise in respect thereof the powers of expropriation conferred upon the corporation by *The Municipal Act*. 2 Geo. V. c. 14, s. 9, *part*.

Rev. Stat.
c. 192.

Work sub-
ject to direc-
tion of
Commission.

44. All works undertaken under the provisions of the next preceding two sections shall be done in accordance with the directions and to the satisfaction of the Commission, and shall be maintained, kept in repair, altered, enlarged or improved to the satisfaction of the Commission and as it may from time to time direct. 2 Geo. V. c. 14, s. 9, *part*.

Penalty.

45. If any order or direction of the Commission for discontinuing the use of overhead lines is not obeyed the lines, poles and other structures in connection therewith upon the highway shall be deemed to be unlawfully erected and maintained, and may be removed by or under the direction of the Commission and at the expense of the owner or user of them, and the company owning or using such lines shall incur a penalty of \$100 a day for the time during which the order of the Commission is disobeyed. 2 Geo. V. c. 14, s. 9, *part*.

Joint order
by Commis-
sion and
Dominion
Railway
Board.

46. Where lines, the construction or operation of which is authorized by this Legislature, and lines the construction of which is authorized by the Parliament of Canada, run through or into the same city or town, and the corporation of such city or town is desirous of having such lines placed underground the Commission and the Board of Railway Commissioners for Canada may, after the receipt of the applications hereinafter mentioned, by joint session or conference in conformity with the practice to be established by them, hear and determine the application, and may order on such terms and conditions as they may prescribe any company constructing or operating lines in the city or town to place such lines underground, and may abrogate any right to carry lines on poles in such city or town, which may have been given by any Act or municipal by-law, license or agreement.

Filing
applications
for order.

(a) Any such company or any municipal corporation or other public body, or any person or persons interested, may file with the secretary of the Commission, and with the secretary of the Board of Railway Commissioners for Canada, the application

for an order under this section, together with evidence of the service of such application upon the company or companies interested or affected, and where the application is not made by the municipal corporation, upon the head of the municipality within which the lines are situate.

- (b) The Chairman of the Commission and the Chairman of the Board of Railway Commissioners for Canada may make rules of procedure and practice covering the making of such applications and the hearing and disposition thereof, and may vary, alter or rescind the same from time to time. Rules of procedure.
- (c) The Chairman of the Commission and the Chairman of the Board of Railway Commissioners for Canada may from time to time assign or appoint from each body the members comprising the joint Board that may be required to sit for the hearing and determining of such applications as they arise. Who to preside at sittings.
- (d) Any such order may be made a rule of the Exchequer Court of Canada, and may be enforced in like manner as any rule, order or decree of such Court. Making order a Rule of Court.

Court. 2 Geo. V. c. 14, s. 9, *part*.

CHAPTER 40.

An Act for the Improvement of Public Highways.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Highway Improvement Act*. See 2 Geo. V. c. 11, s. 14.

2. In this Act,

“Minister” shall mean Minister of Public Works. *New.*

Appropriation
for road im-
provements.

3. So much of the sum of \$2,000,000 heretofore set apart out of the Consolidated Revenue Fund of Ontario to aid in the improvement of public highways as remains unexpended shall continue to be appropriated to that purpose subject to the terms and conditions hereinafter set forth. 7 Edw. VII. c. 16, s. 1; 2 Geo. V. c. 11, ss. 1, 2, 3.

Powers of
County
Council.

4.—(1) The council of any county may by by-law adopt a plan for the improvement of highways throughout the county by assuming highways in any municipality in the county in order to form or extend a system of county highways, designating the highways to be assumed and improved and intended to form or be added to such system; and in case it is impracticable to benefit all the townships in any county equitably by a system of county highways such plan may provide for compensation to any township which by reason of the location of such highways or of the unequal distribution of the expenditure thereon may not benefit proportionately by a grant of such specific amount or annual sum or both to be expended in the improvement of the highways of such township as when so expended will make such plan equitable for the whole county.

Abolition of
tolls.

(2) A plan adopted by the county council under this section may include the purchase of toll roads or freeing them from toll.

Grants to
villages and
towns.

5.—(1) A county council may from time to time while carrying out a plan of highway improvement under this Act by by-law make grants to villages or towns not separated from the county for the purpose of improving such highways or portions of highways in such villages or towns as may be designated in such by-law and which are extensions of or form connections between different portions of county roads;

but no such highways shall by reason of such by-law, or of the expenditure of any such grant thereon, be deemed to have been assumed by the county or to form part of the county system of highways. 7 Edw. VII. c. 16, s. 2 (1), (2), (3), *part*; 1 Geo. V. c. 11, s. 1 (1), *part*.

(2) A grant made under subsection 1 to a village or town having a population of not more than 3,000 shall be deemed to form part of the estimated expenditure in carrying out a plan of highway improvement in such county for the purpose of ascertaining the amount of aid which may be granted to the county under this Act if How reckoned.

- (a) the roads or streets to be improved in the village or town have been designated by the by-law of the council of the county to which there has been attached a plan of the village or town to be aided;
- (b) such by-law has been approved by the Minister; and
- (c) the work done upon such roads and streets is in accordance with the regulations of the Department of Public Works with respect to highways.

(3) In the case of a village or town having a population of more than 1,500 the amount granted under subsection 1 shall be expended solely upon roads and streets or portions thereof which lie opposite to lands on one side or the other thereof used for agricultural purposes. Cases of certain villages or towns.

(4) The approval of the Minister, in writing, shall be conclusive as to the population of any village or town for the purposes of this section. How population determined.

(5) Subsections 2, 3 and 4 shall not affect the payment to a village or town under subsection 1 of any grant made by the council of a county and approved by the Minister before the 24th day of March, 1911, and any such grant shall be included in estimating the expenditure of the county for the purpose of ascertaining the amount of aid to which the county is entitled under this Act as if those subsections had not been enacted. 1 Geo. V. c. 11, s. 1 (1) *part* and (2). Subsections 2, 3 and 4 not to affect grants made before 24th March, 1911.

6. Every highway constructed or repaired in pursuance of a plan adopted by by-law approved by the Lieutenant-Governor in Council under this Act shall be constructed or repaired according to the regulations of the Public Works Department with respect to highways. 7 Edw. VII. c. 16, s. 2 (4). Regulations of Public Works Department.

7. The council of a county in which highway improvements are undertaken under this Act shall by by-law appoint an engineer or some other competent person to be approved by the Minister to act as county road superintendent under the direction of the council. Appointment of road superintendent.

Idem.

8. No grant shall be made to any county under this Act until section 7 has been complied with.

Foreman or
Inspector.

9. The county road superintendent shall place some competent person as foreman or inspector in charge of any work which it is impossible for him to personally oversee, and it shall be the duty of the foreman or inspector to see that the work is properly carried out.

Members of
councils not
to be ap-
pointed.

10. No member of the council of the county and no member of the council of any local municipality in the county shall be appointed or act under sections 7 or 9 or be employed by the county road superintendent in any capacity, and any such member who is appointed or who acts or is employed in contravention of this subsection shall be disqualified from sitting or voting in the council of which he was a member at the time of his appointment or employment. 2 Geo. V. c. 11, s. 4.

When by-law
not to require
assent of
electors.

11. Where a by-law passed under the authority of this Act has received the assent of two-thirds of the members of the county council representing at least one-half of the total equalized assessment of the county it shall not be necessary to submit the same to the electors of the county; but if before the final passing of any by-law under this Act the same has been submitted to and has received the approval of the electors of the county qualified to vote on money by-laws such by-law may be finally passed by a majority of the members of the council present and voting thereon; and a by-law so submitted to the electors may after such submission or after the final passing thereof be amended by the council in order to comply with any direction or requirement of the Minister, and it shall not be necessary to submit any such amending by-law to the electors. 8 Edw. VII. c. 23. s. 1.

Approval by
order in
council.

12.—(1) The corporation of a county shall not be entitled to receive any aid under this Act unless the by-law providing for the improvements in respect of which aid is to be granted has been approved by the Lieutenant-Governor in Council. 2 Geo. V. c. 11, s. 10.

Inquiry by
Minister.

(2) Upon the application of any county council for the approval of a by-law under this Act the Minister may obtain such report upon the plan adopted by such county council as he may deem necessary and may hear any township council which may be dissatisfied therewith before presenting such application for the consideration of the Lieutenant-Governor in Council. 7 Edw. VII. c. 16, s. 3 (2).

Payments to
county out of
appropriation.

13.—(1) When a plan of highway improvement adopted by by-law approved by the Lieutenant-Governor in Council under this Act has been carried out, or at any time during the progress of the work, the county council may submit to the

Minister a statement setting forth the expenditure to date in carrying out such plan, including all payments of grants authorized by this Act, together with the declaration of the treasurer of the county that such statement is correct and also the report of the county engineer or road superintendent that such work is in accordance with the regulations of the Department of Public Works, and on the receipt of such statement and certificate by the Treasurer of Ontario, certified and approved by the proper officer of the Department of Public Works, the Lieutenant-Governor in Council may direct the payment to the corporation of the county out of the fund set apart under this Act of a sum equal to one-third of the amount of such expenditure. 7 Edw. VII. c. 16, s. 4.

14. The council of any union of counties which has passed a by-law under this Act designating the roads to be improved within the united counties after such by-law has been approved by the Lieutenant-Governor in Council may, with the consent of two-thirds of the representatives of any county in the union, by by-law apportion the amount to be expended in any year in such county and may provide that the amount so to be expended shall be raised by special rate upon the property liable to taxation in such county, or with the like consent the council of the united counties may by by-law provide for the issue of debentures for the amount to be expended and may declare that such debentures shall be a charge upon the property liable to taxation in such county, and that the amount required to be raised annually for principal and interest of any debt so created shall be levied and collected in each year during the currency of such debentures by an annual special rate upon the property liable to taxation in such county. 7 Edw. VII. c. 16, s. 5.

Apportionment
of expense
in united
counties.

15. The council of any county which takes advantage of this Act may from time to time pass by-laws to raise by debentures, payable in not more than thirty years as provided by *The Municipal Act*, such sums as may be necessary to meet any expenditure on highways under this Act, not exceeding two per centum of the equalized assessment of the county; or the council instead of raising money by debentures may provide the money required out of county funds, or by an annual county rate in the manner authorized by *The Municipal Act*, and all the provisions of this Act shall apply to any money heretofore or hereafter so provided as fully as if debentures had been issued whether a by-law transferring such money to a special account under this Act has or has not been passed. 7 Edw. VII. c. 16, s. 6; 2 Geo. V. c. 11, s. 6 (1), (3), (4).

Issuing
debentures for
expenditures
on highways.

Rev. Stat.
c. 192.

Raising
money by
general
rate
instead of
debentures.

16. The council of any township may by by-law direct that the statute labour for which land fronting on roads in such township constructed or repaired under this Act may from

Statute labour
application of
upon roads
aided.

year to year be liable may be commuted, and the amounts so received may be paid over to the county and applied in repairing such roads and in removing snow therefrom and keeping the same open during the winter months. 7 Edw. VII. c. 16, s. 7.

Aid to county where road system established prior to 20th April, 1907.

17. Where before the 20th of April, 1907, the council of any county had established a system of county roads approved by the Lieutenant-Governor in Council as provided by *The Act for the Improvement of Public Highways* passed in the first year of the reign of His late Majesty King Edward the Seventh, chaptered 32, such system of county roads shall be deemed to be within the meaning and intent of this Act. 7 Edw. VII. c. 16, s. 8.

Object-lesson or experimental roads.

18.—(1) The Minister may arrange with the corporation of any local municipality for the construction or improvement therein of an object-lesson or experimental road, or of more than one such road.

Powers of Minister.

Rev. Stat. c. 35.

(2) The Minister may lay out, construct, improve and complete any such road and *The Ontario Public Works Act* shall apply to anything done by him under this Act.

Cost of work.

(3) The cost of material, labour, special engineering or other services, plant, machinery and equipment and the repair and maintenance of plant, machinery or equipment in or about any work undertaken by the Minister under this section or incidental thereto shall be paid out of the fund mentioned in section 3 upon the certificate of the Minister, and for that purpose accountable cheques may from time to time be issued against such fund in favour of the Minister upon his requisition therefor.

Duty of maintenance.

(4) A road shall not, by reason of its having been constructed or improved under this Act, become or be the property of the Crown, but every such road after its construction or improvement shall be under the jurisdiction of the council of the municipality in which it is situate and shall be maintained and kept in repair in the same manner as other roads in the municipality. 2 Geo. V. c. 11, s. 9.

Intersection of other highways by county road.

19. Where a county road intersects a highway which is not a county road the continuation of the county road to its full width across the road so intersected, including the bridges and culverts thereon or touching thereon, shall be a part of the county road system. 7 Edw. VII. c. 16, s. 9.

Sidewalks excepted.

20. The corporation of a county shall not by reason of assuming a highway under this Act be liable for the building maintenance or repair of sidewalks on any county road or portion thereof. 7 Edw. VII. c. 16, s. 10.

21.—(1) A county council shall in respect to county roads have all the powers conferred on townships, cities, towns and villages under *The Snow Fences Act*. 7 Edw. VII. c. 16, s. 11.

Powers as to snow fences. Rev. Stat. c. 211.

(2) The corporation of the county shall, in respect to such roads, have all the rights, powers, benefits and advantages conferred either by by-law or contract or otherwise, upon the corporation of the local municipality or the corporations of the local municipalities which had jurisdiction over such roads before they were assumed by the corporation of the county, and the corporation of the county may sue upon such rights or under such agreements or by-laws in the same manner and to the same extent as the local municipality or municipalities might have done if such roads had not been adopted as county roads. 10 Edw. VII. c. 14, s. 1.

Powers of County Council over roads assumed.

22. All highways designated and assumed by a county council in accordance with section 4, except as in subsection 1 of section 5 otherwise provided, shall be maintained and kept in repair by the corporation of the county in which they are situate, and in all cases of doubt or dispute as to what constitute works of maintenance or repair, and what constitute works of construction and the purchase and maintenance and repair of road machinery, plant and equipment, properly chargeable under this Act, the decision of the Minister shall be final; but after the expiration of three years from the final construction and completion of the county system of roads, which shall be so declared by the Minister, the county council may, with the approval of the Lieutenant-Governor in Council and of two-thirds of the local municipalities in the county expressed by by-law, declare that such system of county roads shall, on the 1st of January following, revert to the local municipalities in which the same are situate, and such roads shall thereafter be maintained in the same manner as township roads. 2 Geo. V. c. 11, s. 7.

Highways to be County highways.

Proviso.

Roads revert to townships.

23. Where the Minister is of opinion that any highway or section of a highway assumed by a county council under this Act has ceased to be or for some other reason is not of sufficient importance to be constructed and maintained as a county road such highway or section thereof may be struck off the approved plan of county roads by the Lieutenant-Governor in Council, and such highway or section thereof shall thereupon revert to the corporation of the local municipality in which the same is situate. 2 Geo. V. c. 11, s. 8.

Where improved highway ceases to be important.

24. The Lieutenant-Governor in Council may enter into an agreement with the Governor in Council or with any member of His Majesty's Privy Council for Canada acting for and on behalf of the Governor in Council for the application to the cost of highway improvement under this Act of such subsidy or subsidies or any part of such subsidy or subsidies as may be appropriated for highway improvement by

Authority to enter into agreement with Dominion Government.

the Parliament of Canada, and the Lieutenant-Governor in Council may vary the proportionate amounts to be paid to or by municipalities under this Act by reason of such subsidy or subsidies, and may vary the conditions under which payment shall be made for construction, repair or maintenance in accordance with such agreement. 2 Geo. V. c. 11, s. 11.

Contribution
of cities, etc.,
to improve-
ment of
county
roads.

25. When any highway leading or adjacent to any city or town separated from the county is widened, strengthened, reconstructed or otherwise improved or requires the expenditure of a greater amount for maintenance and repair to meet the requirements of increased, heavy, constant or other extraordinary traffic to or from such city or town, beyond the requirements which, but for the existence of such city or town, would be deemed those of a standard highway for the locality the corporation of such city or town by by-law passed with the assent of at least two-thirds of the members of the council thereof may agree with the corporation of the county to contribute such additional cost, or a proper proportion of the cost, or that the amount of the contribution of such city or town shall be determined by arbitration under *The Municipal Act*, and may, without the assent of the electors, provide by by-law for the issue of debentures payable in not more than twenty years from the date of the issue thereof to raise the amount agreed upon or awarded, or may agree with the corporation of the county for the payment of such amounts in annual instalments to be raised by annual special rate upon the rateable property in the city or town. 2 Geo. V. c. 11, s. 12.

Rev. Stat.
c. 192.

Assuming
main roads
as county
roads and
assessing
townships
specially
benefited.

26 The council of any county may assume as a county road under this Act any main or leading road through or within such county, and where such road does not serve all townships equally the county council may, with the approval of the Minister, omit from assessment any township or townships through which such road does not pass, or may assess any or each township through which such road passes for a larger or smaller amount in order to equitably assess the cost; or the council of any county in which a system of roads is established under this Act may, upon the application of a township council and with the approval of the Minister, levy a special rate upon the township for the construction, improvement or maintenance of the road within such township. 2 Geo. V. c. 11, s. 13.

Annual
statements
by county
to Depart-
ment.

27.—(1) The treasurer of every county shall, before the 1st day of March in each year, make up and transmit to the Minister a detailed and audited statement of all expenditure upon or in connection with county roads or bridges for the next preceding year.

(2) The statement shall be in such form as the Minister ^{Form of statement.} may direct.

(3) The treasurer shall forthwith publish the statement at ^{Publication.} least once in a newspaper published in the county town.

(4) The clerk of the county council shall procure not less ^{Delivery of copies to electors.} than one hundred copies of the statement and shall deliver or transmit by post one of such copies to such of the electors as shall first make request for the same. 2 Geo. V. c. 11, s. 5.

CHAPTER 41.

An Act respecting Colonization Roads.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Colonization Roads Act*. 3-4 Geo. V. c. 11, s. 1.

2. In this Act,

“Minister” shall mean Minister of Public Works. *New.*

Grants for
colonization
roads.

3. Grants may be made of such sums as may be appropriated for that purpose from time to time by this Legislature for the construction or repair or to aid in the construction or repair of such colonization roads as may be deemed necessary in any unsurveyed or unorganized portions of Ontario, or in organized townships where roads are required to give access through unoccupied or sparsely occupied districts, or through districts unfit for cultivation or settlement, and such other roads as this Legislature upon the recommendation of the Minister deems necessary for the proper settlement and development of that portion of Ontario referred to in section 4. 3-4 Geo. V. c. 11, s. 2.

By-laws
designating
highways
for im-
provement.

4.—(1) The council of any municipality comprising one or more townships or a portion of a township or portions of one or more townships in any provisional judicial district or in the provisional county of Haliburton, and the council of any township or union of townships in that portion of Ontario in which money is being expended in the building of colonization roads, may prepare and approve a by-law or by-laws designating any highway or highways in the municipality as highways to be improved under this Act, stating the amount to be expended therefor, but such by-law shall not be finally passed until the same has been submitted to the Minister who may approve, alter or modify the same.

Confirmation.

(2) The council may finally pass any by-law which has been so submitted to the Minister and approved, altered or modified by him, and it shall not be necessary to introduce and re-submit any by-law so modified or altered. 3-4 Geo. V. c. 11, s. 3.

Amount of
grant.

5. Upon the report and recommendation of the Minister the Lieutenant-Governor in Council may direct that any sum

being not less than one-third and not more than two-thirds of the estimated cost of the work upon the highways designated by such by-law as approved or modified by the Minister may be paid to the municipality out of any appropriation made by this Legislature for that purpose. 3-4 Geo. V. c. 11, s. 4.

6. Any work undertaken under this Act shall be carried out under the supervision of an inspector approved by the Minister for that purpose, and shall conform to the regulations prescribed by the Department of Public Works. 3-4 Geo. V. c. 11, s. 5.

Supervision
and inspection.

7. Upon the completion of any work of road improvement in pursuance of a by-law passed in accordance with section 4, or at any time during the progress of such work, the Corporation of the municipality undertaking such work may submit to the Minister a statement setting forth the cost of such work to date together with the declaration of the treasurer of such municipality that such statement is correct and also the report of the inspector, approved by the Minister, that such work is in accordance with the regulations of the Department of Public Works; and on receipt of such statement and certificate by the Treasurer of Ontario, certified and approved by the proper officer of the Department of Public Works, the Lieutenant-Governor in Council may direct the payment to the corporation of such municipality out of any money appropriated for such purpose of a sum not less than one-third and not more than two-thirds of the amount of such cost. 3-4 Geo. V. c. 11, s. 6.

Payment of
grant.

8. The proportion of the cost to be borne by any township or union of townships receiving aid under this Act may be paid in money, or may, with the approval of the Minister, be contributed in labour or partly in money and partly in labour, estimated at the rate of \$2 for a day of ten hours of faithful work by each man employed, and \$4 a day of ten hours faithful work for a man and team, but all such work shall be done under the control and to the satisfaction of the inspector approved by the Minister and shall be certified by him. 3-4 Geo. V. c. 11, s. 7.

Right of
municipality
to contribute
labour
in lieu
of money.

9. The money required to meet any expenditure under this Act shall be paid by the Treasurer of Ontario to the persons entitled thereto upon the recommendation of the Minister out of such money as may be from time to time appropriated by this Legislature for that purpose. 3-4 Geo. V. c. 11, s. 8.

Payment
of grants.

10. All petitions or by-laws for work under this Act, the cost of which is to be paid in whole or in part by Ontario, shall be submitted to the Minister not later than ten days after the commencement of the session of the Assembly at which the money may be voted. 3-4 Geo. V. c. 11, s. 9.

Time for
presenting
petitions.

Disqualifica-
tion from
service as
inspector, etc.

11. No member of the council of any municipality receiving grants of money for road purposes from Ontario shall be appointed or act as inspector, foreman or in any other capacity upon the road work carried out under section 4; and any such member who is appointed or who acts or is employed in contravention of this section shall be disqualified from sitting or voting in the council of which he was a member at the time of his appointment or employment. 3-4 Geo. V. c. 11, s. 10.

4. AIDING DRAINAGE WORKS.

CHAPTER 42.

An Act respecting Provincial Aid to Drainage.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Provincial Aid to Drainage Act*. 1 Geo. V. c. 12, s. 1. Short title.

2. In this Act “drainage work” shall mean and include any drainage work to which *The Municipal Drainage Act* applies. 1 Geo. V. c. 12, s. 2. Interpretation
“Drainage
work.”
Rev. Stat.
c. 198.

3. This Act shall apply to the construction, reconstruction and the improvement of— Application
of Act.

(a) that portion of the trunk channel constituting the outlet of any drainage work;

(b) any work for the purpose of carrying a drainage work through intervening high land to a natural or other outlet;

(c) any work for the purpose of rendering more effective a drainage work by embanking, pumping or other mechanical means. 1 Geo. V. c. 12, s. 3.

4. The council of a municipality initiating a drainage work, being or including work to which this Act applies, may, after adopting the engineer's report, apply to the Lieutenant-Governor in Council by petition verified by a statutory declaration of the engineer, and setting forth the reasons why the whole cost of the work should not be assessed upon the land which would be liable to assessment therefor under *The Municipal Drainage Act*, and that aid should therefore be granted, accompanied by a verified copy of the report, a statement of the cash value and the engineer's assessment of the land, and a field plan of the proposed work. 1 Geo. V. c. 12, s. 4. Application
for aid by the
province.

Rev. Stat.
c. 198.

5.—(1) Where it appears that the drainage work is, or includes, a work to which this Act applies, the Lieutenant- Examination
and grant of
aid on report
thereon.

Governor in Council may cause an examination thereof to be made by an engineer of the Public Works Department who shall report fully thereon and upon all matters alleged in the petition, and upon his report the Lieutenant-Governor in Council may assume and pay out of the Consolidated Revenue Fund such part or proportion of the cost of the undertaking as he may deem just and reasonable.

Approval by
Assembly.

(2) An order in council passed under this section shall not be acted upon until it has been approved by resolution of the Assembly. 1 Geo. V. c. 12, s. 5.

CHAPTER 43.

An Act respecting Municipal Debentures issued for
Drainage Works.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Municipal Drainage Aid* Short title.
Act. 9 Edw. VII. c. 21, s. 1.

2.—(1) The council of a township which has passed a by-law for undertaking a work under the provisions of *The Municipal Drainage Act*, may, after the expiration of the time limited for serving notice of intention to make application to quash the by-law, apply to the Treasurer of Ontario for the purchase by the Province of the debentures authorized thereby. Right to apply to the Treasurer of Ontario for purchase of debentures. Rev. Stat. c. 198.

(2) The application shall be in the prescribed form and shall be sealed with the seal of the municipality, and signed by the head thereof, and shall be accompanied by two affidavits, in the prescribed form, one to be made by him and the other by the clerk of the municipality. 9 Edw. VII. c. 21, s. 2. Form of application.

3. The Treasurer of Ontario shall investigate and report to the Lieutenant-Governor in Council as to the propriety of all proposed investments, in the order in which the applications therefor are received. 9 Edw. VII. c. 21, s. 3. Report by Treasurer as to investment.

4. The Treasurer of Ontario shall not certify to the propriety of an investment where the aggregate amount of the rates necessary for the payment of the annual expenses of the Municipality for the last completed financial year and of the interest and principal of the debts contracted by it exceeds three cents in the dollar on the whole value of the rateable property within its jurisdiction, or where the amount of the debentures to be issued exceeds \$30,000; and the amount invested in the purchase of debentures of any municipality shall not at any time exceed \$20,000. 9 Edw. VII. c. 21, s. 4. When the Treasurer not to certify to propriety of investment.

5. The Lieutenant-Governor in Council may authorize the investment of any surplus of the Consolidated Revenue Fund, not exceeding in the whole at any time \$350,000, in the purchase of debentures, in respect of which the Treasurer Purchase of debentures.

of Ontario certifies to the propriety of the investment. 9 Edw. VII. c. 21, s. 5.

Advances on account.

6. The Lieutenant-Governor in Council may authorize the advance of the whole par value of the debentures, or the retention of such percentage thereof as he may see fit until the Minister of Public Works has reported that the works have been inspected and are completed; and the expenses in connection with the investigation and inspection shall be deducted from the amount, if any, retained. 9 Edw. VII. c. 21, s. 6.

When debentures unquestionable.

7. After such investment, the debentures shall not be questioned in any court and shall be valid and binding according to the terms thereof. 9 Edw. VII. c. 21, s. 7.

Repayment.

8.—(1) The amount payable in each year for principal and interest shall be remitted by the treasurer of the municipality to the Treasurer of Ontario within one month after the same became payable, together with interest at the rate of seven per centum per annum during the time of any default in payment.

Consequence of default in payment.

(2) In case of a continuance of such default the council in the next ensuing year or as the case may require shall assess and levy on the whole rateable property within its jurisdiction in the same manner in which taxes are levied for the general purposes of the municipality a sum, over and above the other valid debts of the corporation falling due within the year, sufficient to enable the treasurer of the municipality to pay the amount in arrear together with interest thereon at the rate of seven per centum per annum from the time the same became payable until payment, whether or not the same has been previously paid by or recovered from the persons or land chargeable therewith.

How arrears ranked as a charge.

(3) The amount so in arrear and the interest shall be the first charge upon all the funds of the municipality other than sinking funds, for whatever purpose or under whatever by-law they may have been raised.

Duty of municipal treasurer after default.

(4) No treasurer or other officer shall after such default pay out of the funds of the municipality any sum, except for the ordinary current disbursements and salaries of clerks and other employees of the municipality or debts due to Ontario, until the amount so in arrear and the interest has been paid to the Treasurer of Ontario.

Liability of municipal officers.

(5) If such treasurer or other officer pays any sum contrary to the provisions of the next preceding subsection, in addition to any criminal liability which he may thereby incur, he shall be personally liable for every sum paid as for money had and received by him for the Crown.

(6) Any member of the council who wilfully or negligently ^{Liability of member} permits any of the foregoing provisions to be violated shall ^{of council.} also be personally and individually liable for the full amount so in arrear and the interest, to be recovered as for money had and received by him for the Crown.

(7) No assessment, levy or payment made under this sec- ^{Liability of} tion shall exonerate the persons or lands chargeable under the ^{lands to} by-law from liability to the municipality. 9 Edw. VII. c. 21, ^{municipality} s. 8. ^{not affected.}

9. The Lieutenant-Governor in Council may make regula- ^{Regulations} tions and prescribe forms for the carrying out of the provi- ^{and forms.} sions of this Act. 9 Edw. VII. c. 21, s. 9.

CHAPTER 44.

An Act respecting Tile, Stone and Timber Drainage Debentures.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Tile Drainage Act*, 9 Edw. VII. c. 22, s. 1.

Borrowing powers of Councils.

2.—(1) The council of a town, village or township may pass by-laws, Form 1, for borrowing for the purposes hereinafter mentioned, in sums of not less than \$2,000, and not exceeding \$10,000, such amount as they may deem expedient, and for issuing therefor debentures of the municipality, Form 2, in sums of \$100 each, payable within twenty years from the 1st day of August in the year in which the money is borrowed from the municipality as is hereinafter provided, and bearing interest at the rate of four per centum per annum, and it shall not be necessary to obtain the assent of the electors to any such by-law before the passing thereof.

Limit of borrowing power.

(2) The amount of the indebtedness of the municipality in respect of money so borrowed and remaining unpaid, including the amount provided for in any by-law being passed, shall not at any time exceed \$10,000; nor shall a by-law be passed except at a meeting of the council specially called for the purpose of considering it, and held not less than four weeks after a notice, Form 3, of the day appointed for the meeting has been published in such newspaper as the council by resolution may direct. 9 Edw. VII. c. 22, s. 2.

Special meeting for considering by-law.

Publication of by-law.

3.—(1) After the passing of the by-law a copy of it shall be published in such public newspaper, published in the municipality or in the county town or in an adjoining or neighbouring municipality, as the council may by resolution designate, and in at least one number of such newspaper each week for three successive weeks.

Notice to be appended.

(2) To each copy of the by-law shall be appended a notice, Form 4.

When by-law to be valid.

(3) If notice of an application to quash the by-law or any part thereof is not given within twenty days after the last publication under this section, or, if such notice is given, and the application is not made within one month after such last publication, the by-law shall not be questioned in any

court and shall be valid and binding according to the terms thereof. 9 Edw. VII. c. 22, s. 3.

4. The debentures may be issued and sold by the municipality from time to time, for the purpose only of lending the proceeds thereof for tile, stone or timber drainage, as hereinafter provided, as money is required for the purpose. 9 Edw. VII. c. 22, s. 4.

5. The debentures shall be made payable to the Treasurer of Ontario, or his order, and shall have twenty coupons attached, each of which shall be for the sum of seven dollars and thirty-six cents. 9 Edw. VII. c. 22, s. 5.

6.—(1) The council, after the expiration of one month from the last publication under section 3, may deposit with the Treasurer of Ontario a copy of the by-law, with affidavits of the head and clerk of the municipality, Forms 5 and 6, and may at any time thereafter apply for the purchase by the Province of the debentures authorized thereby.

(2) The application shall be sealed with the seal of the municipality and signed by the head thereof, and shall specify the names of the persons to whom the money is to be lent. 9 Edw. VII. c. 22, s. 6.

7. The Treasurer of Ontario shall investigate and report to the Lieutenant-Governor in Council as to the propriety of all proposed investments in the order in which the applications therefor are received. 9 Edw. VII. c. 22, s. 7.

8.—(1) A person assessed as owner, and being the actual owner of land in the municipality, desiring to borrow money for the purpose of tile, stone or timber drainage may make application, Form 7, to the council.

(2) The application shall not be acted upon unless it is accompanied by a declaration of the applicant stating that he is the actual owner of the land mentioned in the application, and that the same is free from encumbrance, or if the land or any part of it is mortgaged or otherwise encumbered, stating the name and address of the mortgagee or encumbrancer, and, where it has been assigned, the name of the assignee of the mortgage or encumbrance with his address. 9 Edw. VII. c. 22, s. 8 (1-2); 3-4 Geo. V. c. 17, s. 1.

(3) Where it appears that there is a mortgage or encumbrance upon the land or any part of it the application shall not be disposed of until two weeks after the mortgagee, encumbrancer or assignee has been notified of the application by registered letter, sent to him by the clerk to his last known address. 9 Edw. VII. c. 22, s. 8 (3).

9. If the application is granted the council may issue debentures for such sum within the amount authorized by

this Act and by the by-law of the municipality, as they may deem proper, but not exceeding the sum applied for, nor exceeding seventy-five per centum of the estimated cost of such drainage. 9 Edw. VII. c. 22, s. 9.

Limit of
purchase by
Province.

10. The Lieutenant-Governor in Council may authorize the investment of any surplus of the Consolidated Revenue Fund, not exceeding in the whole at any time \$200,000 in the purchase of debentures issued under such by-laws in respect of which the Treasurer of Ontario shall have certified to the propriety of the investment. 9 Edw. VII. c. 22, s. 10.

Debentures
declared un-
questionable.

11. After such investment, the debentures shall not be questioned in any court and shall be valid and binding according to the terms thereof. 9 Edw. VII. c. 22, s. 11.

Application
of proceeds
of loans.

12.—(1) The council shall lend the money so borrowed only for the purpose of tile, stone or timber drainage and for a term of twenty years, in sums of one or more hundreds of dollars to persons entitled to borrow.

Who may
borrow.

(2) No part of the money so borrowed shall be lent to any member of the council, but a person having so borrowed from a municipality shall not by reason thereof be disqualified from being afterwards elected a member of the council. 9 Edw. VII. c. 22, s. 12.

Limit of
amount to be
loaned.

13.—(1) The council shall not lend to any person a sum which will require the levying of a greater annual rate for all purposes, exclusive of school rates, than three cents in the dollar upon the value of the land in respect of which the money is borrowed.

Value of land
how determin-
ed.

(2) For the purposes of this section the value of the land shall be determined by the last revised assessment roll, and the general annual rate by the general rate imposed for the year in which the money is borrowed from the municipality.

Limit of
loan to
individual.

(3) Not more than \$1,000 shall be lent to one person. 9 Edw. VII. c. 22, s. 13.

Order in which
loans are to be
granted.

14. The council shall consider the applications in the order in which they are made, and shall lend the money in the same order to the persons whose applications shall have been approved. 9 Edw. VII. c. 22, s. 14.

Appointment
of inspector.

15. A council borrowing money under this Act shall employ a competent inspector of drainage, the cost of whose services and whose expenses shall be apportioned rateably against the works carried on under his inspection, and shall be paid by the council out of the money borrowed. 9 Edw. VII. c. 22, s. 15.

16.—(1) On the completion of any drainage works under his charge the inspector shall report to the council the number of rods of drain constructed on each lot or parcel of land, the cost per rod, and such other particulars as may be required by the council. Inspector's report.

(2) The report shall be entered in a book provided by the council, and the money shall not be advanced by the council until the report of the due completion of the work has been so made. 9 Edw. VII. c. 22, s. 13. Record.

17. The council shall impose by by-law, Form 8, and shall levy and collect for the term of twenty years, over and above all other rates upon the land in respect of which the money is lent, a special annual rate of seven dollars and thirty-six cents for each \$100 lent; and the rate shall be collected in the same manner as other special rates imposed under *The Municipal Act*. 9 Edw. VII. c. 22, s. 17. By-law imposing rate.

18. The owner of land, in respect of which money has been borrowed, may at any time obtain the discharge of the indebtedness by paying to the treasurer of the municipality the amount borrowed, with interest thereon at the rate of four per centum per annum less any sum already paid on account of principal and interest; and upon the same being paid to the treasurer, he shall forthwith transmit it to the Treasurer of Ontario, who shall apply it towards payment of the debentures of the municipality. 9 Edw. VII. c. 22, s. 18. Discharge of indebtedness by owner.

19. A council which has borrowed money shall, on or before the 15th day of January in each year, make a return to the Provincial Secretary, showing, for the year which ended on the 31st day of December next preceding, the amount expended in drainage, the number of rods of drain constructed, the names of the borrowers, the land upon which the money has been lent, the names of the persons whose applications have been refused and the reasons in each case for the refusal. 9 Edw. VII. c. 22, s. 19. Returns to Lieutenant-Governor in Council by Municipal Council.

20.—(1) The amount payable in each year for principal and interest shall be remitted by the treasurer of the municipality to the Treasurer of Ontario within one month after the same became payable, together with interest at the rate of seven per centum per annum during the time of any default in payment. Repayment by municipality to Province.

(2) In case of a continuance of such default the council, in the next ensuing year or as the case may require, shall assess and levy on the whole rateable property within its jurisdiction, in the same manner in which taxes are levied for the general purposes of the municipality, a sum over and above the other valid debts of the corporation falling due within the year sufficient to enable the treasurer to pay the Consequence of default in payment.

amount in arrear, together with interest thereon at the rate of seven per centum per annum, from the time the same became payable until payment whether or not the same has been previously paid by or recovered from the persons or lands chargeable therewith.

How arrears
ranked as
a charge.

(3) The amount so in arrear and the interest shall be the first charge upon all the funds of the municipality other than sinking funds, for whatever purpose or under whatever by-law they may have been raised.

Duty of
municipal
treasurer after
default.

(4) No treasurer or other officer shall after such default pay out of the funds of the municipality any sum except for the ordinary current disbursements, and salaries of clerks and other employees of the municipality or debts due to the Province until the amount so in arrear and the interest has been paid to the Treasurer of Ontario.

Liability of
municipal
officers.

(5) If such municipal treasurer or other officer pays any sum contrary to the provisions of the next preceding subsection, in addition to any criminal liability which he may thereby incur, he shall be personally liable for every sum paid as for money had and received by him for the Crown.

Penalty for
violation.

(6) Any member of the council who wilfully or negligently permits any of the foregoing provisions to be violated shall also be personally and individually liable for the full amount so in arrear and the interest, to be recovered as for money had and received by him for the Crown.

Liability of
lands to
municipality
not affected.

(7) No assessment, levy or payment made under this section shall exonerate the persons or lands chargeable under the by-law from liability to the municipality. 9 Edw. VII. c. 22, s. 20.

Regulations
and forms.

21. The Lieutenant-Governor in Council may make regulations and prescribe forms for the carrying out of the provisions of this Act; and, subject thereto, the forms in the schedule hereto shall be used. 9 Edw. VII. c. 22, s. 21.

SCHEDULE.

FORM 1.

(Section 2.)

FORM OF BY-LAW.

By-law No.

A by-law to raise \$ _____ to aid in the construction of tile,
stone or timber drains.

The Council of the Municipality of _____, pursuant to the provisions of *The Tile Drainage Act*, enacts as follows:

1. That the Reeve (or Mayor) may from time to time, subject to the provisions of this by-law, borrow on the credit of the corporation of the said Municipality such sum not exceeding in the whole \$ _____, as may be determined by the Council, and may in manner hereinafter provided, issue debentures of the said corporation in sums of \$100 each for the amount so borrowed, with coupons attached as provided in section 5 of the said Act.

2. That when the Council shall be of opinion that the application of any person to borrow money for the purpose of constructing a tile, stone or timber drain should be granted in whole or in part, the Council may, by resolution, direct the Reeve (or Mayor) to issue debentures as aforesaid, and to borrow a sum not exceeding the amount applied for, and may lend the same to the applicant on the completion of the drainage works.

3. A special annual rate shall be imposed, levied and collected over and above all other rates upon the land in respect of which the said money shall be borrowed, sufficient for the payment of the principal and interest as provided by the Act.

Passed the _____ day of _____ 19 ____.

A. B.,
Reeve (or Mayor).

C. D.,
Clerk.

(Corporate
seal.)

9 Edw. VII. c. 22, Form 1, Sched.

FORM 2.

(Section 2.)

FORM OF TILE DRAINAGE DEBENTURE.

\$100.

No.

Drainage Debenture of the _____ of _____
The Corporation of the _____ of _____, in the County of _____
_____ hereby promises to pay to the Treasurer
of Ontario or order at the Bank of _____ in the _____
of _____, the sum of \$100 of lawful money of Canada, and interest
thereon at five per cent. in twenty equal annual instalments of

\$7.36 each, the first of such instalments to be paid on the
 day of _____, 19____, pursuant to by-law No.
 intituled "A by-law to raise \$_____, to aid in the construc-
 tion of tile, (*stone or timber*) drains."
 (Corporate seal.)

A. B.,

Reeve (or Mayor).

G. H.,

Treasurer.

FORM OF COUPON.

Coupon for twentieth Annual	
Instalment of	Drainage
Debenture No. 1, issued under	
By-law No.	of the
of	\$7.36 payable at the
Bank of	in the
on	day of
19	
A. B.,	G. H.,
Reeve (or Mayor).	Treasurer.

9 Edw. VII. c. 22, Form 2, Sched.

FORM 3.

(Section 2.)

NOTICE OF MEETING TO CONSIDER BY-LAW.

Take notice that a by-law for raising \$_____ under the
 provisions of *The Tile Drainage Act*, will be taken into considera-
 tion by the Municipal Council of the
 of _____ at the _____ of _____, on the _____ day
 of _____, 19____, at the hour of _____ o'clock in the
 noon.

C. D.,

Clerk.

9 Edw. VII. c. 22, Form 3, Sched.

FORM 4.

(Section 3.)

NOTICE.

Municipality of the _____ of _____

Take notice that the above is a true copy of a By-law passed by
 the Municipal Council of the _____ of _____
 on the _____ day of _____, 19____, and all persons
 are required to take notice that any one who desires to apply to
 have such by-law or any part thereof quashed must serve notice
 of his application upon the Head or Clerk of this municipality
 within twenty days after the date of the last publication of this
 notice, and must make his application to the Supreme Court of On-
 tario within one month after the said date. This notice was first
 published on the _____ day of _____, 19____, and the last
 publication will be on the _____ day of _____, 19____.

A. B.,

Clerk.

9 Edw. VII. c. 22, Form 4, Sched.

FORM 7.

(Section 8.)

APPLICATION FOR LOAN.

To the Municipal Council of

1, *E. F.*, owner of (*if part state what part*) lot 140. in
 Concession of the Township of (or as
the case may be) apply for a loan of \$ to assist in
 the construction of rods of
 drain, on the said land. The proposed depth of drain is
 inches, the proposed size of tile is inches (1).
E. F.

(1) *If the proposed drain is to be stone or timber for the words*
"size of tile" substitute the words "inside size of drain."

9 Edw. VII. c. 22, Form 7, Sched.

FORM 8.

(Section 17.)

BY-LAW IMPOSING A RATE.

By-law imposing a Special Drainage rate upon Lot in the
Concession.

Whereas *E. F.*, the owner of (*if part state what part*) Lot in
 the Concession of the Township of (or as the case may
be), applied to the Municipal Council of the said Township under
The Tile Drainage Act, for a loan for the purpose of draining the
 said land; And whereas the said Council has, upon his said appli-
 cation, lent the said *E. F.*, the sum of \$1,000 (or as the case may
be), to be repaid with interest by means of the rate hereinafter
 imposed:

Be it therefore enacted, by the said Municipal Council, that an
 annual rate of \$73.60 per annum (or as the case may require,
namely, \$7.36 for every \$100 lent), is hereby imposed upon the said
 land for a period of twenty years, such rate to be levied and col-
 lected at the same time and manner as ordinary taxes are levied
 and collected.

Passed this day of 19 .
 (Corporate
 seal.)

A. B.,
 Reeve (or Mayor).
C. D.,
 Clerk.

9 Edw. VII. c. 22, Form 8, Sched.

5. AGRICULTURE AND ARTS.

CHAPTER 45.

An Act respecting the Department of Agriculture.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Department of Agriculture Act*. 10 Edw. VII. c. 17, s. 1. Short title

2. In this Act,

Interpretation.

(a) "Department" shall mean the Department of Agriculture.

(b) "Minister" shall mean the Minister of Agriculture.

3. The Department of the Government of Ontario known as the Department of Agriculture is continued and shall be presided over by a member of the Executive Council who shall be known as the Minister of Agriculture. 10 Edw. VII. c. 17, s. 3. Department of Agriculture continued.

4. The Lieutenant-Governor in Council may appoint a Deputy Minister of Agriculture and such other officers and clerks as he may deem necessary for the proper conduct of the business of the Department. 10 Edw. VII. c. 17, s. 4. Deputy Minister.

5. Subject to the provisions of *The Executive Council Act*, the Minister shall have the direction and control of Powers of Minister, Rev. Stat. c. 13.

(a) the administration of the laws relating to agriculture in all its branches;

(b) the collection of statistics and the management of the Bureau of Industries;

(c) The Ontario Agricultural College;

(d) The Ontario Veterinary College;

(e) farm forestry;

(f) immigration and colonization;

(g) inspection of factories and shops;

(h) the administration of statutes respecting stationary engineers;

and shall have and perform such other functions, duties and powers as may be assigned or transferred to him by the Lieutenant-Governor in Council. 10 Edw. VII. c. 17, s. 5.

Expenditure of appropriations.

6. Where an appropriation is made by this Legislature for or in respect of any matter under the management, direction or control of the Department or of the Minister, the same shall be expended by the Minister in accordance with the provisions of the Act regulating the same or, if there are no such provisions, in accordance with the direction of the Lieutenant-Governor in Council. 10 Edw. VII. c. 17, s. 6.

Power to acquire land.

7. When authorized by the Lieutenant-Governor in Council the Minister may acquire by purchase, lease or otherwise land or buildings for the purposes of the Department. 10 Edw. VII. c. 17, s. 7.

Annual report by Minister.

8. The Minister in each year shall submit to the Lieutenant-Governor a report of the proceedings of his Department during the next preceding year, and such report shall be laid before the Assembly forthwith, or, if the Legislature is not at the time in session, then within thirty days after the commencement of the next session thereof. 10 Edw. VII. c. 17, s. 8.

BUREAU OF INDUSTRIES.

Object of Bureau.

9. There shall be attached to the Department a Bureau to be styled "The Bureau of Industries," for collecting, tabulating and publishing industrial information for public purposes. 10 Edw. VII. c. 17, s. 9.

Appointment of secretary and other officers.

10. The Lieutenant-Governor in Council may appoint a Secretary of the Bureau, and may also appoint such other officers as may be necessary for the proper conduct of the Bureau. 10 Edw. VII. c. 17, s. 10.

Collection and publication of information.

11. It shall be the duty of the Minister to institute inquiries and collect useful facts relating to the agricultural and other industrial interests of Ontario, and to publish the same in such manner as he deems best adapted to promote improvement within Ontario; and to procure and publish early information relating to the supply of grain, bread-stuffs and live stock in the other Provinces of the Dominion, in Great Britain, and in the United States and other foreign countries in which the Province finds a market for its surplus products, and as to the demand therefor; and the Minister shall, on or before the first day of May in each year, cause to be published and distributed for the use of the members of the

Assembly, the general report and the tabular abstract for the next preceding year, made by the Secretary to the Minister as provided by section 12. 10 Edw. VII. c. 17, s. 11.

12. It shall be the duty of the Secretary, under the instructions of the Minister, to conduct all correspondence of the Bureau; to send to the proper officers and persons of whom such service is required the schedules with instructions approved by the Minister for the collection of facts and information relating to agriculture and other industries in Ontario; to receive, abstract and tabulate the information collected and obtained, and to publish the same from time to time during the growing season; to prepare at the close of each year a general report to the Minister, including a tabular abstract of facts relating to land, trade, government, population and other subjects compiled annually from the departmental records of Ontario and from other available records; and generally to perform all work within the sphere of the Bureau as may be directed by the Minister. 10 Edw. VII. c. 17, s. 12.

Duties of
secretary

13. The Minister, with the approval of the Lieutenant-Governor in Council, may make such arrangements as he deems expedient with the Government of Canada for the collection and transmission of information on the agricultural, manufacturing and other interests of Ontario, or for obtaining for the use of Ontario such information as may have been collected by the Department of Agriculture of Canada. 10 Edw. VII. c. 17, s. 13.

Arrangements
with Govern-
ment of
Dominion.

14. Each collector and officer employed in collecting data for the Bureau of Industries shall be entitled to receive one copy of the publications and reports of the Bureau. 10 Edw. VII. c. 17, s. 14.

Copies of
publications.

15.—(1) The officers of all societies and associations mentioned in *The Agricultural Associations Act*, *The Agricultural Societies Act*, and *The Horticultural Societies Act*, and of all municipal corporations, school boards, and public institutions, and all public officers of Ontario, shall promptly answer all official communications from the Bureau, shall from time to time collect and tabulate facts according to instructions to be furnished them, shall make diligent efforts to supply correct information on all questions submitted to them, and generally shall act as far as practicable upon the recommendations of the Minister.

Duty of
officers of cer-
tain societies,
municipalities,
etc.,
to answer all
official com-
munications.

Rev. Stat. c. 46.
Rev. Stat. c. 47.
Rev. Stat. c. 48.

(2) Any officer of any such society, association, corporation, school board or public institution making a false return of information, or refusing or wilfully neglecting to answer any question, or to fill up, tabulate and return any official schedule according to the instructions furnished, and within the prescribed times, or to furnish information relating to the

Penalty.

industries of Ontario, when required so to do either by the Minister or by the Secretary of the Bureau, shall for every such offence incur a penalty of \$40. 10 Edw. VII. c. 17, s. 15.

Powers of
Minister
on default.

Rev. Stat.
c. 192.

16. In case any of the returns under the preceding sections are not made as required, or in case any of the municipal returns to the Bureau of Industries required under *The Municipal Act*, or amendments thereto are not made, or in case the returns so made are not satisfactory to the Minister, the Minister may direct some competent person to examine the books and records of the office, or person designated by statute to report thereon, and to make the return required, and the person so directed by the Minister shall, upon the production of his written instructions from the Minister, have full and free access to all the books and records necessary for the making up of such return, and any person refusing to allow the person so directed to have full and free access to such books and records shall for every such offence incur a penalty of \$40. 10 Edw. VII. c. 17, s. 16.

Recovery of
penalties,
Rev. Stat. c. 90

17. The penalties provided by this Act shall be recoverable under *The Ontario Summary Convictions Act*. 10 Edw. VII. c. 17, s. 17.

CHAPTER 46.

An Act respecting Agricultural Associations.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Agricultural Associations Act*. 10 Edw., VII., c. 18, s. 1. Short title.

2. In this Act,

Interpretation.

(a) "Association" shall mean any one of the organizations referred to in sections 3 and 21. "Association."

(b) "Minister" shall mean the Minister of Agriculture. 10 Edw. VII., c. 18, s. 2. "Minister."

3. The following associations, societies and organizations shall be, or continue to be, bodies corporate under the provisions of this Act:— Certain bodies declared to be corporations.

The Fruit Growers' Association of Ontario.

The Entomological Society of Ontario.

The Dairymen's Association of Eastern Ontario.

The Dairymen's Association of Western Ontario.

The Western Ontario Poultry Association.

The Eastern Ontario Poultry Association.

The Ontario Bee-keepers' Association.

The Ontario Agricultural and Experimental Union.

The Dominion Sheep Breeders' Association.

The Dominion Swine Breeders' Association.

The Dominion Cattle Breeders' Association.

The Canadian Horsemen's Association.

The Ontario Horse Breeders' Association.

The Ontario Vegetable Growers' Association.

The Gardeners' and Florists' Association.

The Ontario Corn Growers' Association.

The Ontario Plowmen's Association. 10 Edw. VII. c. 18, s. 3; 1 Geo. V. c. 17, s. 50.

4. The membership of each Association shall consist of annual subscribers, and the membership fee shall be fixed by by-law. 10 Edw. VII., c. 18, s. 4. Membership.

5. Each Association shall have a constitution and by-laws, under which the Association shall be conducted, and the constitution and by-laws, and any change, alteration or repeal thereof shall be submitted to and approved by the Minister Constitution and by-laws.

before the same shall have force or effect. 10 Edw. VII., c. 18, s. 5.

Annual
meeting.

6. Each Association shall hold an annual meeting at such time and place as may be determined by by-law. 10 Edw. VII., c. 18, s. 6.

Election of
directors.

7. Each Association, at its annual meeting, shall elect a board of directors, the number of directors, their representation of certain districts or classes of members, and their mode of selection being determined by by-law. 10 Edw. VII., c. 18, s. 7.

Non-members,
election of.

8. The members may elect as director a person not a member of the Association, but the person so elected must, within ten days, become a member, and he shall be entitled to act as director only after he has become a member of the Association. 10 Edw. VII., c. 18, s. 8.

Statements
at annual
meeting.

9. At each annual meeting the retiring officers shall present a full report of their proceedings, and of the proceedings of the Association, and a detailed statement of the receipts and expenditure for the previous year, and of the assets and liabilities, duly audited, and a copy of the report, and of each of the statements of the receipts and expenditure, together with a list of the members and a list of the officers elected, and also such general information on matters of special interest to each Association as the Association has been able to obtain, shall be sent to the Minister within forty days after the holding of the annual meeting. 10 Edw. VII. c. 18, s. 9.

President and
vice-president.

10.—(1) The directors shall, from among themselves, elect a President and one or more Vice-Presidents; and shall also from among themselves or otherwise elect a Secretary and a Treasurer or a Secretary-Treasurer.

Secretary-
Treasurer.

Quorum.

(2) Except as otherwise provided for, a majority of the directors of the Association shall form a quorum. 10 Edw. VII., c. 18, s. 10.

Powers of
Directors.

11. The directors shall have full power to act for and on behalf of the Association, and all grants of money and other funds of the Association shall be received and expended under their direction, subject to the by-laws and regulations of the Association. 10 Edw. VII., c. 18, s. 11.

AUDIT OF ACCOUNTS.

Auditing of
accounts.

12. The Minister may appoint a person who shall audit the accounts of any Association, and such auditor shall present a report of the result of his audit to the officers of the Association, and also to the Minister. 10 Edw. VII. c. 18, s. 12.

GENERAL PROVISIONS AS TO ELECTIONS.

13. The members of the Association may by by-law provide that only those members who have paid their subscriptions at least one week in advance of the annual meeting shall be qualified to vote at the annual meeting for the election of directors. 10 Edw. VII., c. 18, s. 13. Right of voting.

14. Except as otherwise provided, a vacancy occurring by the death or resignation, or failure to qualify as member, of any officer or director may be filled by the remaining officers of the Association; and it shall be the duty of such officers to nominate and appoint a fit and proper person to fill the office for the unexpired term of the person so dying or resigning; but, in the event of the remaining officers being insufficient to form a quorum, or, if, for any reason, a quorum cannot be obtained, then persons to fill the vacant offices shall be elected in manner provided in the next section. 10 Edw. VII., c. 18, s. 14. Vacancies in offices.

15.—(1) In the event of an election of any directors of an Association not being held at the time or place directed by by-law or being for any reason illegal and void, the persons in office at the time when such officers or directors should have been elected shall continue to be the officers of the Association until their successors are legally appointed. Continuance in office.

(2) In the event of any such non-election or illegal election, a special meeting of the members of the Association shall, as soon as practicable, be called in the manner provided by this Act, for the election of such directors; and at such meeting the election of officers shall take place, and the persons elected shall thenceforth, until their successors are appointed, be the officers of the Association. 10 Edw. VII. c. 18, s. 15. Failure to elect—special meeting.

MEETING OF DIRECTORS.

16. A special meeting of the directors of any Association organized under this Act may be called by the president thereof, or, in his absence or on his neglect, by the vice-president, or, in the absence or on the neglect of the president and vice-president, by any three members of the Association, of which meeting at least seven days' notice shall be given to each member. 10 Edw. VII. c. 18, s. 16. Special meeting of directors.

SECURITY BY TREASURER.

17.—(1) The treasurer of every Association before entering upon the duties of his office shall give such security, either by joint or several covenant with one or more sureties, or otherwise, as the board of directors may deem necessary, for the faithful performance of his duties and especially for Security by treasurer.

the duly accounting for and paying over all money which may come into his hands.

Duty of board
as to security.

(2) It shall be the duty of the board in each and every year to inquire into the sufficiency of the security given by the treasurer and to report thereon; and where the same treasurer for any Association is re-appointed from year to year his re-appointment shall not be considered as a new term of office, but as a continuation of the former appointment, and any bond or security given to the Association for the faithful performance of his duties under such re-appointment shall continue valid as against the parties thereto.

Personal
responsibility
of officers
for loss.

(3) If the officers of an Association neglect to procure and maintain proper and sufficient security they shall be personally responsible for all funds of the Association in the possession of the treasurer. 10 Edw. VII. c. 18, s. 17.

Legislative
grant.

18. Each Association shall be entitled to receive from unappropriated money in the hands of the Treasurer of Ontario a specified sum to be placed in the estimates and voted by this Legislature for each year on the following conditions:—

- (a) That the number of *bona fide* members is at least fifty;
- (b) That the secretary of the Association shall, on or before the 1st day of September in each year, transmit to the Minister an affidavit, stating the number of members who have paid their subscriptions for the current year, and the total amount of such subscriptions;
- (c) That the general provisions of this Act applying to the Associations have been complied with;
- (d) That none of the funds of the Association, from whatever source derived, have been expended in a manner inconsistent with the purposes of organization of the Association. 10 Edw. VII. c. 18, s. 18.

Forfeiture of
powers for
non-user.

19. If an Association ceases for twelve consecutive months to do business as required by this Act and by its constitution, by-laws and rules, or if the Minister is satisfied, after an enquiry at which the Association was given due notice to appear, that the business of the Association is not being properly conducted, the Minister may declare the corporate powers of the Association forfeited. 10 Edw. VII. c. 18, s. 19.

WINTER FAIRS.

Certain
Shows and
Exhibitions
incorporated.

20. The Ontario Horticultural Exhibition, the Ontario Provincial Winter Fair and the Eastern Ontario Live Stock and Poultry Show shall be corporate bodies under this Act, and the Lieutenant-Governor in Council may provide that the

sections of this Act, as far as practicable, shall apply to these bodies, and may prescribe such constitution, rules, and regulations as are deemed necessary. 10 Edw. VII. c. 18, s. 20.

INCORPORATION OF OTHER ASSOCIATIONS.

21.—(1) Upon the petition of any association or society not subject to the provisions of this Act, but formed for the purpose of advancing the interests of any branch of agriculture, being presented to the Lieutenant-Governor in Council, the Lieutenant-Governor may, by Order-in-Council, declare that this Act shall apply to the association or society so petitioning, and thereafter this Act shall apply to such association or society in the same manner and to the same extent as if it had been incorporated under this Act. Admission of other societies.

(2) Every such Order-in-Council shall be published in the *Ontario Gazette* for two weeks following the date of its passing. 10 Edw. VII. c. 18, s. 21.

ADVISORY BOARD.

22.—(1) An Advisory Board for Live Stock may be formed to advise the Minister regarding matters of interest to the live stock industry. Advisory board for live stock.

(2) The Lieutenant-Governor may by Order in Council direct how the Board shall be constituted, and may prescribe the duties and powers of the Board.

(3) Members of the Advisory Board shall receive an allowance for their time and for their necessary travelling expenses in attending meetings of the Board, or a Committee of the Board. 10 Edw. VII. c. 18, s. 22. Allowance for expenses.

FARMERS' AND WOMEN'S INSTITUTES.

23.—(1) The formation of Farmers' Institutes and of Women's Institutes, for the purpose of disseminating information in regard to agriculture, and of improving domestic life, shall be permitted under this Act, and the same shall constitute associations under this Act. Farmers' and Women's Institutes.

(2) The Lieutenant-Governor in Council may, upon recommendation of the Minister, make rules and regulations providing for the number and location of the Farmers' Institutes and Women's Institutes, for the general guidance and direction of the same, and fixing the grants and conditions upon which the grants are to be paid. 10 Edw. VII. c. 18, s. 23. Rules and regulations.

CHAPTER 47.

An Act respecting Agricultural Societies.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title. **1.** This Act may be cited as *The Agricultural Societies Act*.
10 Edw. VII. c. 19, s. 1.
- Interpretation. **2.** In this Act—
- “Department.” (a) “Department” shall mean The Department of Agriculture;
- “Minister.” (b) “Minister” shall mean The Minister of Agriculture for the Province of Ontario;
- “Society.” (c) “Society” or “Societies” shall mean any Agricultural society or societies formed under this Act or *The Agriculture and Arts Act*, or under any former Agriculture and Arts Act;
- R.S.O. 1897,
c. 43.
- “Superintendent.” (d) “Superintendent” shall mean The Superintendent of Agricultural Societies. 10 Edw. VII. c. 19, s. 2.
- Societies continued.
- 3.** All agricultural societies organized under *The Agriculture and Arts Act*, shall be continued except in so far as they may be altered or affected by this Act. 10 Edw. VII. c. 19, s. 3.
- Powers of Minister.
- 4.** The Minister may decide all matters of doubt or dispute as to the working or construction of this Act, and his decision shall be final, except that an appeal therefrom may be made to the Lieutenant-Governor in Council. 10 Edw. VII. c. 19, s. 4.
- Inspection.
- 5.** The Minister may appoint a person to inspect the books and accounts of any society receiving Government aid under this Act, and may empower such person to summon witnesses and enforce the production of documents before him, and to take evidence upon oath in regard to such inspection; and all officers of any such society, whenever required so to do, shall submit the books and accounts thereof to such inspection, and shall truly, to the best of their knowledge, answer all questions put to them in relation thereto, or to the funds of such society. 10 Edw. VII. c. 19, s. 5.

6.—(1) Subject to the provisions of the following subsections a society may be organized in any section of Ontario. Where permissible.

(2) A society shall not be organized within twenty miles of an existing society, organized under this Act, or under *The Agriculture and Arts Act*, being chapter 43 of *The Revised Statutes of Ontario, 1897*, or under any former Agriculture and Arts Act, unless the physical or other natural conditions of the adjoining country are such that the formation of such society will not injuriously affect the nearest adjoining society. Limitation as to distance from nearest society.

(3) An application for permission to organize a new society at a specified point that is within twenty miles of the headquarters of an existing society, shall be made in writing to the Minister, and shall set forth clearly and fully the facts of the situation, and shall be signed by at least sixty of the persons desirous of forming such society, except in provisional judicial districts or unorganized counties, where the number shall be at least forty. Application for permission to organize within 20 miles of another society.

(4) Upon receipt of such application the Minister shall instruct the Superintendent to confer with and, if necessary, to call a special meeting of the officers of the existing society whose headquarters are at the point nearest to the point at which it is proposed to form a new society, at which meeting such officers, by resolution, shall declare themselves as being in favour of or opposed to the granting of the application. Consent of older society.

(5) Should the resolution be in favour of granting the application, the Lieutenant-Governor in Council may grant permission for the formation of the society. Permission.

(6) Where the granting of the application is opposed, the Superintendent shall call upon the existing society and upon the petitioners each to appoint one arbitrator, and the two arbitrators shall appoint a third arbitrator, and the three arbitrators shall consider the granting of the application, and they or a majority of them shall make a recommendation thereon to the Minister. Arbitration.

(7) If either the signers of the petition or the officers of the existing society refuse to appoint an arbitrator, the Minister may grant or refuse the application, as he may deem best. When Minister may decide.

(8) The parties concerned in all such disputes shall deposit with the Department such money as may be required to pay all expenses connected therewith, such payment to be made according to the decision of the arbitrators, or a majority of them. 10 Edw. VII. c. 19, s. 6. Deposit to cover expenses.

7. The mode of organization shall be as follows:—

Mode of organization.

(a) a declaration, Form 1, shall be signed by persons residing within ten miles of the point designated as the headquarters of the society desiring to Declaration of membership.

organize a society under this Act. The number of such persons shall be at least sixty, except in the case of societies organized in provisional judicial districts and unorganized counties, where the number shall be at least forty;

Qualification of members.

(b) no person shall be considered a member of any society for any year unless he shall have paid at least one dollar into the funds of that society as membership fee for that year;

Firms and companies may be members.

(c) subject to the by-laws of the society, a firm, or an incorporated company may become a member of any society incorporated under this Act by the payment of the regular fee, but the name of one person only shall in any one year be entered as the representative or agent of such firm or company, and that person only shall as such exercise the privileges of membership in the society;

Transmitting declaration to Minister.

(d) within one month after the membership fees of the signers thereof have been paid the declaration, with the names and addresses of the signers, shall be transmitted to the Minister, who shall thereupon authorize a person to call the first meeting for the organization of the society;

First meeting.

(e) the first meeting of the society shall be held between the 15th and the 21st days inclusive of January next ensuing, at the point designated as the headquarters of the society, of which meeting at least two weeks' public notice shall be given by advertisement in one or more newspapers published in the county or district, and also by printed placards or bills posted in local places of common resort;

Election of officers.

(f) at the first meeting there shall be elected a president, a first vice-president, a second vice-president, and not more than nine other directors, who shall be duly qualified members of the society, or who must become so within fourteen days after their election, and who together shall form the board of directors, a majority of which board shall reside within ten miles of the place designated as the headquarters of the society;

Auditors.

(g) at the first meeting the society shall appoint two auditors for the ensuing year;

Secretary and treasurer.

(h) the board, from among themselves, or otherwise, shall appoint a secretary and a treasurer, or a secretary-treasurer, who shall remain in office during pleasure, and shall, by virtue of his office,

be a member of each committee appointed, and may be given the powers of managing-director acting under the control and with the approval of the board of directors;

- (i) the board, from among themselves, may appoint an executive committee of not more than five members to perform such duties as the board by resolution may specify;
- (j) a report of the organization meeting, certified by the president, the secretary and the convener, and containing a statement of the number of members and a list of the officers elected and appointed, shall be sent to the Department within one week after the holding of the meeting. 10 Edw. VII. c. 19, s. 7.

Executive committee.

Transmission of report of organization meeting.

8.—(1) Upon the receipt of such report the society so organized shall be deemed an agricultural society, within the meaning of this Act, and shall bear the name designated in the declaration as the headquarters of the society, or such name as may be determined by the members and approved by the Minister. 10 Edw. VII. c. 19, s. 8 (1).

Status of society and name.

(2) In case of a dispute as to the name of any society, or in any case where in the opinion of the Minister, the name of a society prejudicially affects the interests of another society he may change the name of any society. 2 Geo. V. c. 17, s. 6 (1).

Change of name.

(3) For the purpose of this Act, the headquarters of a society shall be the place at which the society held its last annual exhibition, or which it has designated by by-law or resolution, at a meeting duly called for the purpose, as its headquarters or place of holding its exhibition, a certified copy of which by-law or resolution shall be forwarded to the Department and the society shall thereafter be designated by the name of such place, or by such name as may be determined by the members and approved by the Minister. 10 Edw. VII. c. 11, s. 8 (2).

Headquarters of society.

9.—(1) The Minister may authorize the society to elect at its first or at any subsequent meeting not more than six persons as directors, in addition to those hereinbefore provided for.

Directors.

(2) A society may appoint not more than six honorary directors, but such directors shall not have the right to vote or take part in meetings of the board of directors. 10 Edw. VII. c. 11, s. 9.

Honorary directors.

10. Upon the recommendation of the Superintendent, the Minister may authorize any society to elect six directors in

Election of additional directors.

addition to those already provided for. 10 Edw. VII. c. 11, s. 10.

Quorum.

11. At the first meeting, and at any subsequent meeting of any society, ten members shall form a quorum. 10 Edw. VII. c. 11, s. 11.

Objects of societies.

12.—(1) The object of a society shall be to promote improvement in agriculture, horticulture, arboriculture, domestic industry, manufactures and the useful arts

- (a) by awarding premiums for live stock other than grade breeding males, for agricultural or horticultural implements and machinery, for the production of grain and of all kinds of vegetables, plants, flowers, fruits, home manufactures, and generally for excellence in any agricultural or horticultural production or operation, article of manufacture or work of art;
- (b) by organizing plowing matches, holding seed fairs, spring stallion and bull shows, competitions respecting standing crops, and for the best or best managed farms;
- (c) by owning or distributing pure bred registered animals, and seeds and plants of new and of valuable kinds;
- (d) by promoting the circulation of agricultural periodicals;
- (e) by offering prizes for essays on questions of scientific inquiry relating to agriculture, horticulture, domestic industries, manufactures and the useful arts; and
- (f) by taking action to eradicate poisonous and noxious insects and weeds.

Unauthorized expenditure to forfeit grant.

(2) A society which expends any of its funds for any purpose inconsistent with those herein mentioned shall forfeit all claim to participate in the legislative grant. 10 Edw. VII. c. 11, s. 12; 1 Geo. V. c. 17, s. 46.

Annual meetings.

13.—(1) The annual meetings of the several societies shall be held between the 15th and the 21st days inclusive of January in each year, at the headquarters of the society and at the hour of one o'clock in the afternoon.

Who may vote.

(2) At any such meeting only those members who have paid the subscription for the ensuing year shall be entitled to vote.

Notice of meetings.

(3) At least two weeks' previous notice of any such meeting shall be given by advertisement in one or more news-

papers published in the municipality or municipalities in which the society is organized, and also by printed placards or bills posted in places of common resort, or by sending such notice by registered post, mailed to the last known post office address of each member of the society in good standing, such notices to be mailed at least one week previous to, and to state the time and the place of the meeting.

(3) In case a society shall, through any cause, fail to hold its annual meeting at the time appointed, the Minister, on petition of the president and secretary, may appoint a time for holding the same before the first day of March in the same year, the meeting to be called as for the regular annual meeting, and this meeting shall be taken for all purposes as the annual meeting of the society. When meeting not held at appointed time.

(4) In the event of the annual meeting not being held as provided for in this Act, or in the event of the number of members on the first day of September in any year being less than the number required for organization, the society shall have no further claim to participate in the legislative grant, and shall be deemed to have been dissolved; but the directors elected at the last properly constituted meeting of the society prior to the first day of September shall be the trustees of the assets of the society until the same are disposed of by the order of the Minister. Forfeiture of grant if meeting not held.

(5) Where a society is dissolved or ceases to exist it shall be re-organized only by proceeding under section 7, and in accordance with section 6. Reorganization.

(6) Upon being notified or becoming aware of the dissolution of any society under the provisions of the preceding subsections the Minister may order the directors to deliver over to the Department the assets, if any, remaining after all just debts have been paid. 10 Edw. VII. c. 19, s. 13. Disposal of surplus assets.

14. In addition to any other business the following business shall be transacted at the annual meeting:— Business at annual meeting.

- (a) the board of directors shall present at such meeting a report of their proceedings for the past calendar year, in which shall be stated the names of all the members of the society, the amount paid by each being set opposite to his name, the amount offered and also the amount awarded in prizes for each kind of live stock, agricultural products, implements, domestic products or other objects respectively, and the number of entries in each class, together with such remarks and suggestions upon the agriculture and horticulture of the district, and the arts and manufactures therein as they are enabled to offer; Report of directors.

Statement of
receipts and
expenditures.

(b) the board of directors shall present a detailed statement of the receipts and expenditures for the preceding year, also a statement of the assets and liabilities of the society at the end of the year, certified to by the auditors;

Election of
officers.

(c) the officers and other directors specified in clause (f) of section 7, qualified as therein provided, shall be elected by the members, and auditors shall be appointed for the ensuing year. 10 Edw. VII. c. 19, s. 14.

Transmission
of reports to
Department.

15. The reports shall, if approved by the meeting, be placed on record in the books of the society, and shall also be sent within one month to the Department, and the Minister may require all such reports to be made out on schedules to be supplied by the Department in such form as he may direct, and failure to comply with such requirements shall be sufficient to forfeit all claim, on the part of the society, to participate in the legislative grant. 10 Edw. VII. c. 19, s. 15.

By-laws and
regulations.

16.—(1) The members of each society may, at an annual meeting or at a special meeting, of which two weeks' previous notice has been given by advertisement in the manner required by subsection 2 of section 13, make, alter and repeal by-laws and regulations for the general management of the society, but subject to such by-laws and regulations, the board of directors shall have full power to act for and on behalf of the society, and all grants and other funds of the society shall be received and expended under their direction.

Special
meetings.

(2) On petition of thirty members of any society, the secretary shall call a special meeting for the consideration of such matters as may be set forth in the petition. The meeting shall be advertised in the manner prescribed by subsection 3 of section 13, and the advertisements shall state the nature of the business to be transacted. 10 Edw. VII. c. 19, s. 16.

Meetings of
board of
directors.

17. The first meeting of the board of directors of a society may be held upon the day of the annual meeting, and the subsequent meetings shall be held pursuant to adjournment, or be called by written notice given by authority of the president, or, in his absence, of the first vice-president, or in the absence or on the neglect of the president and first vice-president, then on the written request of any three of the directors, at least one week before the day appointed, and at any meeting five shall be a quorum. 10 Edw. VII. c. 19, s. 17.

Incorporation
and power to
hold land.

18.—(1) Every society shall be a body corporate, with power to acquire and hold land as a site for fairs and exhibitions, and, subject to the approval of a meeting of the society called for the purpose, to sell, mortgage, lease, or otherwise

dispose of the same, or any other property held by such society.

(2) At least two weeks' previous notice of such meeting shall be given by advertisement in one or more newspapers published in the county or district and by printed placard; and at such meeting only those persons shall be entitled to vote who are members for the current year and who were members for the two previous years.

Notice of meetings to consider disposition of property.

(3).—(a) If the owner of the land selected as a site for fairs and exhibitions, approved of at a meeting of the society called for that purpose, refuses to sell the same or demands therefor a price deemed unreasonable by the board of directors, then such owner and such board of directors shall each forthwith appoint an arbitrator, and the arbitrators so chosen shall appoint a third arbitrator, and such arbitrators or a majority of them shall determine the value of such land.

Acquiring site: arbitration to fix price.

(b) If the directors or the owner of such land neglect or refuse to appoint an arbitrator, the senior judge of the county or district court of the county or district in which the land lies may, on the application of the party who has so appointed an arbitrator and on notice to the opposite party, appoint an arbitrator on behalf of the party so neglecting or refusing to appoint an arbitrator.

Appointment of arbitrator by county judge.

(c) The arbitrators so chosen shall have the power to hear and determine all claims or rights of encumbrancers, lessees, tenants or other persons as well as those of the owner of the land required for the purpose of such site upon notice in writing to every such claimant or person.

Powers of arbitrators.

(d) Upon payment by the directors of the amount determined by a majority of the arbitrators appointed as aforesaid, to the owner or other persons entitled thereto, the land may be taken and used for the purposes aforesaid.

Payment of compensation.

(e) Any award for a site for fairs and exhibitions made and published under this Act, if there be no conveyance, shall be deemed thereafter to be the title of the society to the land mentioned in it, and shall be a good title thereto against all persons interested in the land in any manner whatever, and shall be registered in the proper registry office, on the affidavit of the secretary and treasurer or secretary-treasurer of the directors verifying the same.

Effect of award.

Expenses of arbitration.

(f) The parties concerned in all such disputes shall pay all the expenses incurred in regard to them, according to the award or decision of the arbitrators or a majority of them.

Consent of Lieutenant-Governor in Council.

(4) The provisions of subsection 3 shall be applicable only by consent of the Lieutenant-Governor in Council. 10 Edw. VII. c. 19, s. 18.

Joint ownership of lands with municipality.

19. Any township society and town or village municipality that had, prior to the 4th day of March, 1868, jointly purchased and held any land or buildings for the purpose of agricultural fairs or exhibitions, may continue jointly to hold such land or buildings, or may sell, mortgage, lease or otherwise dispose of the same, subject to the approval of a meeting of the society as provided in section 18. 10 Edw. VII. c. 19, s. 19.

Dissolution of union societies.

20. Where two or more municipalities have been united under the provisions of *The Agriculture and Arts Act*, R.S.O. 1897, c. 43, or any former Agriculture and Arts Act to form a township society, a dissolution of such union society may be effected in the following manner: a petition requesting a dissolution and the organization of new societies shall be signed by a majority of the members residing in any one of the municipalities and shall be forwarded to the Minister, and if the number so signing is equal to the number required for the organization of a new society, as provided by section 7, the Minister shall direct that new societies shall be organized in the manner prescribed in that section, and the former union society shall thereupon become dissolved and cease to exist. 10 Edw. VII. c. 19, s. 20.

Disposition of assets on dissolution.

21. On the dissolution of a union society the assets of the society shall be equitably apportioned or divided by arbitrators, or a majority of them, one to be appointed by the board of directors of each of the new societies, and another arbitrator to be chosen by the arbitrators so appointed, or in the event of the arbitrators failing to choose such arbitrator within ten days after being appointed, then the senior judge of the county or district court having jurisdiction in the county or district shall appoint such arbitrator. 10 Edw. VII. c. 19, s. 21.

Annual returns to Department.

22.—(1) On or before the first day of March of each year, the officers of every society shall send to the Department an affidavit, Form 2, stating on forms, to be provided by the Department, the exact financial transactions of the society during the previous year. This statement shall set forth plainly the number of members of the society in good standing, the amount of money paid in prizes for horses, cattle, sheep, swine, poultry, articles of domestic manufacture, other

products of the farm, orchard and garden and for such other purposes as are set forth in section 12, and such money shall be considered to have been expended for agricultural purposes.

(2) In the case of societies holding a spring stallion show, a spring bull show, a combined spring stallion and bull show, or a spring seed fair, the officers of such societies shall send to the Department on a separate form, to be provided by the Department, within thirty days after the holding of such spring show or fair, an itemized statement showing the receipts and expenditures in connection therewith, together with the number of entries. Statement of expenses.

(3) Any society failing to send in the statement within the prescribed time shall forfeit all claim to share in the legislative grant for the current year. 10 Edw. VII. c. 19, s. 22. Consequences of failure to send returns.

23. Every society shall be entitled to receive a grant out of the unappropriated money in the hands of the Treasurer of Ontario, to be paid on the recommendation of the Department, on condition:— Grants out of Provincial funds.

- (a) that the number of paid-up members for the current year is not less than sixty, except in the case of societies organized in provisional judicial districts or unorganized counties, where the number of paid-up members must not be less than forty;
- (b) that all reports and returns required by this Act have been made to the satisfaction of the Minister;
- (c) that the annual meeting has been held as required and officers elected, in accordance with section 14;
- (d) that the objects of the society as prescribed by section 12, have been strictly adhered to, and that none of the funds of the society, from whatever source derived, have been expended in any manner not in harmony with these objects. 10 Edw. VII. c. 19, s. 23.

24.—(1) Such amounts as may be voted by this Legislature shall be paid to the societies on the following basis: Division of Provincial grant.

- (a) a society that has owned and maintained pure bred stock, for the benefit of its members, for a period of at least nine months during the next preceding year, shall receive a grant of \$50 for every registered stallion, \$20 for every registered bull, \$10 for every registered boar and \$5 for every registered ram so owned. In the event of a

society devoting its funds solely for the maintenance of pure bred stock, such society shall receive a special membership grant of one dollar for every member of the society in good standing, up to fifty;

- (b) a newly organized society, during the first three years of its existence, shall receive a grant each year equal to one dollar per member up to 300 members.
- (c) the remainder of the grant voted for Agricultural Societies shall be divided among the societies other than new societies, in proportion to the amount they expended during the next preceding three years, for agricultural purposes, as shown by their sworn statements, and as defined by section 22, and there shall not be included in such expenditure money used for the purchase or maintenance of pure bred stock, for the holding of spring stallion shows, spring bull shows, or combined spring stallion and bull shows or for spring seed fairs;
- (d) societies in provisional judicial districts and unorganized counties shall be entitled to receive their grants on the basis of double their actual expenditure for agricultural purposes;
- (e) a society shall not be entitled to receive a total grant exceeding \$800;
- (f) a society that holds a spring stallion show, a spring bull show, or a combined spring stallion and bull show shall receive a grant not exceeding \$50, equal to one-half the sum expended in the holding of such show;
- (g) a society that holds a spring seed fair shall receive a grant not exceeding \$25.00, equal to one-half the sum expended in the holding of such fair;
- (h) should it be found, within one year after the receipt by the Department of a society's annual statement, that an officer of the society has wilfully made false returns with an intention to deceive, such officer shall incur a penalty not exceeding \$100, recoverable under *The Ontario Summary Convictions Act*, or be liable to imprisonment for a period not exceeding thirty days. 10 Edw. VII. c. 19, s. 24.

Rev. Stat.
c. 90.

Special grants
to Agricultural
Societies where
gate receipts
affected by
weather.

(2) If the Superintendent on or before the fifteenth day of November in any year receives proof by the joint affidavit of the president and secretary or secretary-treasurer that rain or snow has fallen at the place of holding an exhibition,

and before three o'clock in the afternoon on any day of the holding of an exhibition, and upon his being satisfied that as a consequence the gate receipts were less than the average of the previous three years of holding the exhibition, the society shall be entitled to receive a grant equal to one-half of the difference between the gate receipts of the current year and the average of the gate receipts of the previous three years, but the amount to be paid shall not exceed \$300, and the total amount so paid to all societies shall not exceed \$10,000. 1 Geo. V. c. 17, s. 49; 2 Geo. V. c. 17, s. 6 (2).

25. Out of any unappropriated money in the hands of the Treasurer of Ontario a further sum not exceeding \$5,000 shall be subject to division among The Industrial Exhibition Association of Toronto, The Central Canada Exhibition Association of Ottawa, and The Western Fair Association of London, in proportion to the amount of money expended for agricultural purposes as set forth in section 12, provided that not more than \$2,500 be paid to any one society, upon condition that

Special aid
from Province
to certain ex-
hibitions.

(a) returns similar to those prescribed by sections 14 and 22 have been made to the Minister;

(b) the provisions of section 32 have been strictly adhered to or enforced in connection with the exhibition held by the society in the last preceding year.
10 Edw. VII. c. 19, s. 25.

26.—(1) Horse racing other than trials of speed under the control and regulation of the officers of the society shall not be carried on during the days appointed for holding any exhibition by any society at the place of holding the exhibition or within five miles thereof.

Horse racing
prohibited.

(2) Any person who is guilty of a violation of this section shall be liable to a fine not exceeding \$50, recoverable under *The Ontario Summary Convictions Act*.

Penalty.
Rev. Stat.
c. 90.

(3) If any person is convicted under this section, the society proven to have permitted horse racing shall be debarred from receiving any portion of the legislative grant in the next ensuing year.

Society to for-
feit grant.

(4) Prosecutions under this section may be made only upon the information being laid by a person who is a member of the society for the current year and who also was a member of the society in the previous year. 10 Edw. VII. c. 19, s. 26.

Who may lay
information.

27.—(1) The exhibition of any society shall be held at the place designated as the headquarters of the society.

Exhibitions.

(2) When the members of any society have by by-law or resolution fixed upon a place as the headquarters of the society, or upon any place for holding the exhibition of such

Changing
headquarters
of Society.

society for any year, the place so designated shall not be changed to any place within twenty miles of the headquarters of another society, but it may be changed to any place not within such radius upon the decision of a majority of the qualified voters as follows:—

- (a) a special meeting shall be called by the board of directors, or by thirty members as provided in subsection 2 of section 16, for the expressed purpose of considering the question;
- (b) at least two weeks' previous notice of such meeting shall be given by advertisement as prescribed in subsection 3 of section 13;
- (c) only paid-up members for the current year who were also members in the previous year shall be qualified to vote;
- (d) the meeting shall be called for ten o'clock in the forenoon, and if a poll is demanded it shall be opened at once and remain open until six o'clock, except that it may be closed by the presiding officer of the society if at any time one hour elapses without any vote being polled.
10 Edw. VII. c. 19, s. 27.

Accommodation for exhibitions.

28. The exhibitions of any society shall be held at such place only as shall afford sufficient accommodation for such exhibitions. 10 Edw. VII. c. 19, s. 28.

Power to withhold prizes when fraud shown.

29. The board of directors of any society on being made aware of any fraud having been committed by any member or exhibitor in the entry of any stock or goods in competition for prizes at any exhibition, shall have the power of withholding the payment of any prizes that may have been awarded by the judges to such members or exhibitors on such fraudulent or any other entries made at any such exhibition.
10 Edw. VII. c. 19, s. 29.

KEEPING THE PEACE, ETC., AT EXHIBITIONS.

Appointment of constables.

30.—(1) Any justice of the peace having jurisdiction in any city, town, village or township, wherein a fair or exhibition is or is to be held, shall, on the request of the president or executive committee of any society, appoint as many policemen or constables, to be named by the society, as may be required.

Duty of constables.

(2) The duty of such policemen and constables shall be, at the expense of the society, to protect the property of such society within the exhibition grounds, and to eject all persons who may be improperly within the grounds, or who may

behave in a disorderly manner, or otherwise violate any of the rules or regulations of such society. 10 Edw. VII. c. 19, s. 30.

31. If any person wilfully hinders or obstructs the officers ^{Interfering with officers.} or servants of any society in the execution of their duty, or gains admission to the grounds contrary to the rules of such society, he shall incur a penalty of not less than \$1, nor more than \$20, recoverable under *The Ontario Summary* ^{Rev. Stat.} *Convictions Act*, to be paid over to such society for its ^{c. 90.} use and benefit. 10 Edw. VII. c. 19, s. 31.

32.—(1) The officers of a society may by their rules and regulations prohibit and prevent all kinds of theatrical or circus or acrobatic performances, exhibitions or shows, and may also regulate or prevent the huckstering or trafficking in fruits, goods, wares or merchandise on the exhibition grounds, or within 300 yards thereof; and any person who, after notice of such rules and regulations, violates the same shall be liable to be removed by the officers, policemen or constables of the society and be subject to the penalty prescribed by the next preceding section. ^{Prohibiting certain shows and performances, etc.}

(2) The officers of the society shall prevent all immoral or indecent shows and all kinds of gambling and all games of chance, including wheel of fortune, dice games, pools, coin tables, draw lotteries or other illegal games at the place of holding the exhibition or fair, or within 300 yards thereof, and any association or society permitting the same shall forfeit all claim to any legislative grant during the year next ensuing. ^{Duty as to preventing improper shows.}

(3) The officers of a society shall not allow any person to exhibit either publicly or to any individual any gambling device, or to bring any such gambling device into the buildings or upon the grounds in or upon which the exhibition or fair is being held. ^{Gambling devices.}

(4) No person shall carry on, or assist or aid in carrying on, any kind of gambling, or any game of chance, at any agricultural, live stock, or industrial exhibition or fair, or within half a mile thereof. ^{Gambling.}

(5) It shall not be lawful to sell or to have for sale on any exhibition ground during the time of holding an exhibition, ^{Sale of liquor on grounds.} any wine, beer or spirituous liquors, and any society permitting the same shall forfeit all claim to any grant during the next ensuing year.

(6) Any person violating the provisions of this section ^{Penalty.} shall incur a penalty of not less than \$20 or more than \$100, ^{Rev. Stat.} recoverable under *The Ontario Summary Convictions Act*. ^{c. 90.}

Application of section.

(7) This section shall apply to all exhibitions held by any society. 10 Edw. VII. c. 19, s. 32.

Powers of Dominion and Provincial Constables.

33.—(1) Any Dominion police constable or Provincial police constable shall have the right of free entrance to the grounds and to all the buildings on the grounds where a fair or exhibition is being held under the direction of any society, during the time that the fair or exhibition is being held.

Seizing and confiscating gambling devices, etc.

(2) Any constable or other peace officer may, without warning or notice, immediately seize all devices and instruments used by any person in connection with any kind of gambling or games of chance or immoral or indecent side show, and may arrest such person without warrant and take him before the nearest magistrate having jurisdiction, there to be dealt with according to law, and every such device or instrument, after the conviction of the person concerned, shall be destroyed under the direction of the magistrate before whom the case is tried. 10 Edw. VII. c. 19, s. 33.

GENERAL PROVISIONS AS TO ELECTIONS.

Who may vote at meeting.

34. Every person not under eighteen years of age who has paid the membership subscription for the year then next ensuing to any society, shall have the right of voting at the election of officers, and on all other questions submitted to the annual meetings of such societies. 10 Edw. VII. c. 19, s. 34.

When votes may not be received.

35. No membership subscription for the ensuing year, paid after the president or presiding officer has declared the poll open for the election of officers, shall entitle any member to vote for such officers, nor shall any votes be received earlier than one o'clock in the afternoon nor later than six o'clock in the afternoon of the same day.

Vacancies in offices.

36. Except as otherwise provided, a vacancy occurring by the death or resignation of any officer of a society may be filled by the remaining officers thereof; and it shall be the duty of such officers to nominate and appoint a fit and proper person to fill the office for the unexpired term of the person so dying or resigning; but in the event of the remaining officers being insufficient to form a quorum, or if for any reason a quorum cannot be obtained, persons to fill the vacant offices shall be elected in manner provided by the following section. 10 Edw. VII. c. 19, s. 36.

Failure to elect.

37.—(1) In the event of an election of any officers of a society not being held at the time or place herein directed, or being for any reason illegal and void, the persons in office at the time when such officers should have been elected shall continue to be, and shall be deemed to be, the officers of such society until their successors are legally appointed.

(2) In the event of any such non-election or illegal election, a special meeting of the members of such society shall be called as soon as practicable for the election of such officers; such meeting to be called in the manner provided in subsection 3 of section 13 by the president, or, in his absence or on his neglect, by the vice-president, or in the absence or on the neglect of the president and vice-president, then by any three members of the society, and at such meeting the election of officers shall take place, and the persons elected shall thenceforth, until their successors are appointed, be the officers of such society. 10 Edw. VII. c. 19, s. 37.

Special meetings for elections.

SPECIAL MEETINGS OF DIRECTORS.

38. A special meeting of the directors of any society may be called by the president thereof, or, in his absence or on his neglect, by the vice-president, or, in the absence or on the neglect of the president and vice-president, then by any three members of such society, of which meeting at least seven days' notice shall be given to each member; and, except as otherwise provided for, a majority of the directors of any society shall be a quorum. 10 Edw. VII. c. 19, s. 38.

Special meeting of directors.

Quorum.

SECURITY BY TREASURER.

39.—(1) The treasurer of every society, before entering upon the duties of his office, shall give such security, either by joint or several covenant with one or more sureties, which may be in such form as the board of directors or other managing officers may deem necessary, for the faithful performance of his duties, and especially for the duly accounting for and paying over all money which may come into his hands.

Security by treasurer of society.

(2) It shall be the duty of the board in each and every year to enquire into the sufficiency of the security given by such treasurer and report thereon; and where the same treasurer for any society is re-appointed from year to year his re-appointment shall not be considered as a new term of office, but as a continuation of the former appointment, and any bond or security given to the society for the faithful performance of his duties under such re-appointment shall continue valid as against the parties thereto.

Duty of board as to security.

(3) If the officers of a society neglect to procure and maintain proper and sufficient security they shall be personally responsible for all funds of the society in the possession of the treasurer. 10 Edw. VII. c. 19, s. 39.

Personal responsibility of officers for loss.

MUNICIPAL AID TO SOCIETIES.

40.—(1) The municipal council of any city, town, village, county or township in Ontario may grant or loan money or grant land in aid of any agricultural society formed within

Grants from municipal councils.

the limits of the municipality or partly within the limits of such municipality and partly within the limits of other municipalities, or wholly within the limits of an adjoining municipality, when such society has made the returns required by this Act to be made to the Minister, provided always that the total amount or value of the money or land heretofore or hereafter granted or loaned by any municipality to an agricultural society under this section shall not exceed, in the case of a city, \$5,000, in the case of a town, \$2,000, and in the case of a village, \$1,000. 10 Edw. VII. c. 19, s. 40 (1); 1 Geo. V. c. 17, s. 74.

Security for
loans from
municipalities.

(2) If such grant is a loan of money to enable the society to acquire land, such municipality may hold the land so acquired or may take a mortgage thereon, as security for the amount of such grant until the amount of such grant be repaid to the municipality; and any such grant heretofore made in accordance with the provisions of this Act shall be legal and valid.

Agreements as
to use of build-
ings.

(3) Any of such municipalities owning land or buildings for public purposes shall have the power to make agreements on such terms and for such periods as they may deem expedient with any company formed under the provisions of chapter 196 of the Revised Statutes of Ontario, 1897, or under any enactment that may be substituted therefor, or with any agricultural society for the use of such land or buildings, or either of them, or for the privilege of erecting on said land, subject to such terms as may be agreed on, such buildings as they may require for agricultural and industrial shows, and to give the company the power of renting such grounds and buildings when owned by the company to any agricultural society formed under this Act or any amendment thereto, to and for the purposes of the annual show or shows of the society, and to grant to such company or society the power to collect during such show, or at other times, as may be agreed, from any person wishing to go into or upon any such grounds or buildings, or for any privilege thereon, or for any carriage, wagon or other vehicle, or for any horse or other animal that may be taken thereon, such entrance fee or other charge as the company or society may deem necessary or expedient. 10 Edw. VII. c. 19, s. 40 (2-3).

FORM 1.

(Section 7.)

DECLARATION OF ASSOCIATION.

We, whose names are subscribed hereto, agree to form ourselves into a society, under the provisions of *The Agricultural Societies Act*, to be called the Agricultural Society of (*designating the point that the Department will be asked to recognize as the headquarters of the society*), and we hereby severally agree to pay to the treasurer the sums opposite our respective names; and we further agree to conform to the by-laws and rules of the society.

Names.

\$

cts.

10 Edw. VII. c. 19, Form I.

FORM 2.

(Sections 22.)

AFFIDAVIT AS TO MEMBERSHIP AND PAYMENTS FOR AGRICULTURAL PURPOSES.

County of }
To Wit: }

I, , of , treasurer of the Agricultural Society of , make oath and say, that during the year ending 31st day of December, 19 , the said Agricultural Society expended the sum of \$, solely for agricultural purposes, in accordance with the Act, as set forth in the audited financial statement of the society, and that no prizes for horse races or special attractions, and no prize money other than cash is included in the above amount, and that the number of members of the society for 19 is .

Treasurer.

Sworn before me this }
day of , 19 . }

Justice of the Peace for the County of
or a Commissioner for taking affidavits.
10 Edw. VII. c. 19, Form 2.

EXPENDITURE FOR AGRICULTURAL PURPOSES.

	\$	c.
Prizes paid, Horses, \$ Cattle, \$ Sheep, \$
(Prizes for horses not to include horse races)		
Prizes paid, Pigs, \$ Poultry, \$ Dairy Products, \$
“ Grain and Seeds.....
“ Roots and other hoed crops.....
“ Orchard and Garden products.....
“ Implements and General Manufactures.....
“ Fine Arts, \$ Ladies' Work, \$
“ All other objects on Exhibition.....
Money paid for prizes awarded in previous years.....
“ “ “ “ “ at Plowing Match.....
“ “ “ “ “ for Field Crop Competition..
(Contributed by Society)		
Meetings or Lectures for discussion of Agricultural Subjects..
Agricultural Periodicals.....
Purchase of Live Stock.....
Purchase of Seed and Plants.....
Keep of Stock.....
Expenses of Delegates to Fairs and Exhibitions' Convention.
Total Cash Expenditure for Agricultural Purposes..

CHAPTER 48.

An Act respecting Horticultural Societies.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. 1. This Act may be cited as *The Horticultural Societies Act*. 10 Edw. VII. c. 20, s. 1.

Interpretation. 2. In this Act,

"Department." (a) "Department" shall mean The Department of Agriculture;

"Minister." (b) "Minister" shall mean the Minister of Agriculture for the Province of Ontario;

"Superintendent."
ent." (c) "Superintendent" shall mean the Superintendent of Horticultural Societies;

"Society." (d) "Society" shall mean any horticultural society organized under this Act or under any former Agriculture and Arts Act. 10 Edw. VII. c. 20, s. 2.

Societies continued. 3. All horticultural societies organized under *The Agriculture and Arts Act*, being chapter 43 of the Revised Statutes of Ontario, 1897, shall be continued, except in so far as they may be affected by this Act. 10 Edw. VII. c. 20, s. 3.

Powers of Minister. 4. The Minister may decide all matters of doubt or dispute as to the working or construction of this Act, and his decision shall be final, except that an appeal therefrom may be made to the Lieutenant-Governor in Council. 10 Edw. VII. c. 20, s. 4.

Inspection of books and accounts. 5. The Minister may appoint any person to inspect the books and accounts of any society receiving Government aid, under or by virtue of this Act, and may empower such person to summon witnesses and enforce the production of documents before him, and to take evidence upon oath in regard to such inspection; and all officials of any such society whenever required to do so shall submit the books and accounts thereof to such inspection, and shall truly, to the best of their knowledge, answer all questions put to them in relation thereto, or to the funds of such society. 10 Edw. VII. c. 20, s. 5.

ORGANIZATION.

6.—(1) A society may be organized in any city, town or village, and in a police village having a population of not less than 500. 10 Edw. VII. c. 20, s. 6; 3-4 Geo. V. c. 18, s. 13. ^{Where societies may be organized.}

(2) In a city having a population of 100,000 or over two societies may be organized, but in that case neither of the societies shall be entitled to receive an annual grant of more than \$500. 2 Geo. V. c. 17, s. 7 (1). ^{Cities of 100,000 or over.}

7. The mode of organization shall be as follows:

Organization.

- (a) A declaration, Form I., shall be signed by the persons residents of the municipality in which the society is organized who desire to organize a society under this Act. In the case of a city having a population of 30,000 or over the number of such persons shall be at least 125; in the case of a city with a population of less than 30,000 the number shall be at least 75. Societies organized in towns having a population of 2,000 or over shall have at least 60 members, and in the case of a village or police village the number shall be at least 50; ^{Declaration of membership.}
- (b) No person shall be considered a member of any society for any year unless he shall have paid at least \$1 into the funds of that society as membership fee for that year; ^{Qualification of members.}
- (c) Subject to the by-laws of the society, a firm or an incorporated company may become a member of any society organized under this Act, or any former Agriculture and Arts Act, by the payment of the regular fee, but the name of one person only, in any one year, shall be entered as the representative or agent of any firm or company, and that person only shall exercise the privileges of membership in the society or organization; ^{Firms and companies.}
- (d) Within one month after the money has been so paid the declaration, with the names and addresses of the signers of same, shall be transmitted to the Minister, who shall thereupon instruct the Superintendent to authorize a person to call the first meeting for the organization of the society; <sup>Transmitting declaration to Minister.
First meeting.</sup>
- (e) The first meeting of the society shall be held between the 8th and 14th days, inclusive, of January next ensuing, of which meeting at least two weeks' public notice shall be given by advertising in one or more newspapers published in the district; ^{When meeting to be held.}
- (f) At the first meeting, and at any subsequent meetings, of any horticultural society ten members shall constitute a quorum.

Election of
first officers;

(g) At the first meeting there shall be elected a president, a first vice-president, a second vice-president, and not more than nine other directors, all of whom shall be members of the society in good standing, or become so within fourteen days after their election, who together shall form the board of directors, a majority of which board shall reside in the municipality in which the society is organized;

Auditors.

(h) At the first meeting the society shall appoint two auditors for the ensuing year;

Secretary-
Treasurer

(i) The board of directors, from among themselves or otherwise, shall appoint a secretary and a treasurer, or a secretary-treasurer, who shall remain in office during pleasure. The secretary or the secretary-treasurer, by virtue of his office, shall be a member of each committee appointed and may be given the power of managing director, acting under the control and with the approval of the board of directors;

Transmission
of report to
Department.

(j) A report of the organization meeting, certified by the president, the first vice-president, the second vice-president, the secretary and the convener, and containing a statement of the number of members and a list of the officers elected and appointed, shall be sent to the Department within one week after the holding of the meeting. 10 Edw. VII., c. 20, s. 7.

Status of
society.

8. Upon the receipt of such report the society so organized shall be deemed a horticultural society, and each society so organized shall be entitled to participate in the legislative grant hereinafter provided, and to enjoy all the privileges granted by this Act. 10 Edw. VII., c. 20, s. 8.

Objects of
societies.

9.—(1) The objects of a society shall be to encourage improvement in horticulture,—

(a) by holding meetings for discussion and for hearing lectures on subjects connected with the theory and practice of improved horticulture;

(b) by holding exhibitions and awarding premiums for the production of vegetables, plants, flowers, fruits, trees and shrubs;

(c) by the distribution of seeds, plants, bulbs, flowers, shrubs and trees in ways calculated to create an interest in horticulture;

(d) by promoting the circulation of horticultural periodicals;

- (e) by encouraging the improvement of home and public grounds, by the planting of trees, shrubs and flowers, and by otherwise promoting outdoor art and public beauty;
- (f) by offering prizes for essays on questions relating to horticulture;
- (g) by importing and otherwise procuring and distributing seeds, plants, shrubs, and trees of new and valuable kinds.

(2) A society shall not expend more than one-half of its total receipts in any one of the lines of work mentioned, but in estimating such receipts, grants or donations for any specific purpose shall not be considered. Distribution of expenditure.

(3) No society shall hold an exhibition, or offer premiums, in connection with the exhibition of any agricultural society. Not to act with agricultural society.

(4) None of the funds of a society shall be expended for any purpose inconsistent with those mentioned, and a society which violates any of the provisions of this and the two next preceding subsections shall forfeit all claim to the Government grant. 10 Edw. VII. c. 20, s. 9. Restrictions on expenditure.

10.—(1) The annual meetings of a society shall be held during the first seven days of November of each year, at such time and place as the board of directors may determine. Annual meetings.

(2) At any such meeting only those members who have paid their subscriptions for the ensuing year shall be entitled to vote. Who may vote.

(3) At least two weeks' previous notice of any such meeting shall be given by advertisement in one or more newspapers published in the municipality, and also by printed placards or bills posted in places of common resort, or by sending the same by registered post to the last known post-office address of each member of the society in good standing; such notices shall be mailed at least one week previous to, and shall state the time and place of the meeting. Notice of meetings.

(4) In case a society fails to hold its annual meeting during the first seven days of November, the Minister, on petition of twenty members, may appoint a time for holding the same not later than the 31st day of December in the same year, and the meeting shall be called as for the regular annual meeting and shall be taken in all respects as the annual meeting of the society. Failure to hold meetings at regular time.

(5) In the event of the annual meeting not being held as provided for in this Act, or in the event of the number of the members on the first day of July in any year being less than the number required for organization, the society shall not be entitled to receive any further financial aid from this Legislature, and shall be deemed to have been dissolved, but the Dissolution of society, if meeting not held.

directors elected at the last properly constituted meeting of the society, prior to the first day of July, shall be trustees of the assets of the society until the same are disposed of by order of the Minister.

Disposal of
assets on
dissolution.

(6) Upon being notified, or becoming aware of the dissolution of any society under the provisions of the preceding subsection, the Superintendent may order the directors to deliver over to the Department the assets, if any, remaining after all just debts have been paid. 10 Edw. VII. c. 20, s. 10.

Annual report.

11. At the annual meeting

(a) The board of directors shall present a report of their proceedings for the past calendar year, in which shall be stated the names of all the members of the society, the amount of money expended in each of the lines of work open to horticultural societies, as outlined in section 9 of this Act. When an exhibition or exhibitions have been held and premiums awarded the report shall show the total amount offered in prizes at each, the amount paid in prizes, and the number of entries;

Statement
of receipts
and
expenditure.

(b) The board shall also present a detailed statement of the receipts and expenditures for the preceding year, and a statement of the assets and liabilities of the society at the end of the year, certified to by the auditors;

Election of
officers.

(c) The officers and other directors specified in clause (g) of section 7 and to be qualified as therein provided shall be elected by the members, and auditors shall be appointed for the ensuing year. 10 Edw. VII. c. 20, s. 11.

Transmission
of reports to
Department.

12.—(1) The reports shall, if approved by the meeting, be placed on record in the books of the society, and shall be sent, not later than the first day of February, to the Department, and the Minister may require all such reports to be made out on schedules to be supplied by the Department in such form as he may direct, and failure on the part of the society to comply with these requirements shall be sufficient to forfeit all claim to participation in the legislative grant.

Attestation of
statements.

(2) The Minister may require that any of the statements referred to in the above report shall be attested by affidavit in such form as he may prescribe. 10 Edw. VII. c. 20, s. 12.

By-laws.

13. The members of each society may, at any annual meeting, or at a special meeting of which two weeks previous notice has been given in the manner required by subsection 3 of section 10, make, alter and repeal by-laws and regulations for the general management of the society, and subject to such by-laws and regulations the board of directors shall have power to act for and on behalf of the society, and all grants

and other funds of the society shall be received and expended under their direction. 10 Edw. VII. c. 20, s. 13.

14. The first meeting of the board of directors of a society may be held on the day of the annual meeting, and the subsequent meetings may be held pursuant to adjournment, or called by written notice given by authority of the president, or in his absence of the first vice-president, or in the absence or neglect of the president or vice-president then on the written notice of three of the directors, at least one week before the day appointed, and at any meeting five shall be a quorum. 10 Edw. VII. c. 20, s. 14. Meetings of Directors.

15. Where two or more municipalities have been united under the provisions of any former Act to form a horticultural society a dissolution of such union society may be effected in the following manner: A petition requesting the dissolution and the organization of new societies shall be signed by a majority of the members residing in any one of the municipalities and shall be forwarded to the Minister, and if the number so signing is equal to the number required for the organization of a new society as in section 7 the Minister shall direct that new societies shall be organized in the manner prescribed in section 7, and the former union society shall thereupon become dissolved and shall cease to exist. 10 Edw. VII. c. 20, s. 15. Dissolution of union societies.

16. On the dissolution of a union society the assets of the society shall be equitably apportioned or divided by arbitrators, or a majority of them, one to be appointed by the board of directors of each of the new societies, and another arbitrator to be chosen by the arbitrators so appointed, or, in the event of the arbitrators failing to choose such arbitrator within ten days after being appointed, the senior judge of the county or district court, as the case may be, having jurisdiction in the county or district shall appoint such arbitrator. 10 Edw. VII. c. 20, s. 16. Distribution of assets on dissolution.

17. On or before the first day of July of each year the officers of every society shall send to the Department an affidavit, stating the number of members in good standing at the time of making the same, and also the amount of money expended for horticultural purposes as defined by this Act. 10 Edw. VII., c. 20, s. 17. Annual statements to Department.

18. Every society organized under or recognized by this Act shall be entitled to receive a grant out of the unappropriated money in the hands of the Treasurer of Ontario, the grant to be paid on the recommendation of the Superintendent, and on condition that,— Grant out of Provincial funds.

- (a) the number of paid-up members for the current year is not less than the number required for organization;

- (b) all reports and returns required by this Act have been made to the satisfaction of the Superintendent;
- (c) the annual meeting has been held as required and officers elected, in accordance with section 11;
- (d) the objects of the society, as set out in section 9, have been strictly adhered to, and none of the funds of the society, from whatever source derived, have been expended in any manner not in harmony with those objects. 10 Edw. VII. c. 20, s. 18.

Division of
Provincial
grant.

19.—(1) Such amounts as may be voted by the Assembly shall be subject to division among the horticultural societies as follows:

- (a) One-third shall be subject to division among all the societies in proportion to the total number of members of each society in the preceding year;
- (b) Two-thirds shall be subject to division among all the societies in proportion to the total amount expended by each society during the preceding year for horticultural purposes, in accordance with the provisions of section 9;
- (c) A society in the first year of its existence shall receive a grant at the rate of one dollar for each paid-up member on the first day of July, but such grant shall not exceed in all \$75;
- (d) No society shall be entitled to receive an annual grant of more than \$800. 10 Edw. VII. c. 20, s. 19; 2 Geo. V. c. 17, s. 7 (2)-(5).

(2) Any amount voted by the Assembly in addition to the amounts stated above in this section shall be divided among the societies in the same proportion and in the same manner as prescribed in (a) and (b) of subsection 1. 10 Edw. VII. c. 20, s. 19 (2).

Exhibitions.

20. The exhibitions of any society shall be held within the limits of the municipality in which the society is organized, and shall be held at such place as shall afford sufficient accommodation for such exhibitions. 10 Edw. VII. c. 20, s. 20.

Fraud in ob-
taining prizes.

21. The board of directors, on being made aware of any fraud having been committed by any member or exhibitor in the entry of any horticultural product in competition for prizes at any exhibition, may withhold the payment of any prizes that may have been awarded by the judges to any members or exhibitors on such fraudulent, or any other entries made at any such exhibition. 10 Edw. VII. c. 20, s. 21.

22. Any justice of the peace having jurisdiction in any city, town or village wherein an exhibition is held shall, on request of the president or executive committee of any society, appoint as many policemen or constables as may be required at the expense of the society, whose duty it shall be to protect the property of such society and to eject all persons who may be improperly within the grounds or on the premises, or who may behave in a disorderly manner or otherwise violate any of the rules or regulations of such society. 10 Edw. VII. c. 20, s. 22.

Appointment
of constables.

23. If any person wilfully hinders or obstructs the officers or servants of any society in the execution of their duty, or gains admittance to the exhibitions of such society contrary to the rules of the society, he shall incur a penalty of not less than \$1 and not more than \$20, recoverable under the provisions of *The Ontario Summary Convictions Act*, and to be paid over to such society for its use and benefit. 10 Edw. VII. c. 20, s. 23.

Penalty for
interference
with officers.

Rev. Stat.
c. 90.
Application of
penalty.

24. Every person not under eighteen years of age who has paid the membership subscription for the year then ensuing to any society to which this Act applies shall have the right of voting at the election of officers and on all other questions submitted to the annual meetings of such societies. 10 Edw. VII. c. 20, s. 24.

Right to vote
at meeting.

25. No membership subscription for the ensuing year paid at the annual meeting after the president or presiding officer has declared the poll open for the election of officers shall entitle any person to vote for such officers. 10 Edw. VII. c. 20, s. 25.

When votes
may not be
received.

26. Except as otherwise provided a vacancy occurring by the death or resignation of any officer of a society may be filled by the remaining officers thereof; and it shall be the duty of officers to nominate and appoint a fit and proper person to fill the office for the unexpired term of the person so dying or resigning; but in the event of the remaining officers being insufficient to form a quorum, or if for any reason a quorum cannot be obtained, then persons to fill the vacant offices shall be elected in manner provided in the next section. 10 Edw. VII. c. 20, s. 26.

Vacancies in
office.

27.—(1) In the event of an election of any officers of a society not being held at the time or place herein directed, or being for any reason illegal or void, the persons in office at the time when such officials should have been elected shall continue to be the officers of such society until their successors are legally appointed.

Illegal elec-
tion.

(2) In the event of any such non-election, or illegal election, a special meeting of the members of such society shall be called, as soon as practicable, for the election of such officers,

Special meet-
ing for election.

such meeting to be called in the manner provided in subsection 3 of section 10 by the president, or in his absence or on his neglect by the vice-president, or in the absence or on the neglect of the president and vice-president by three members of the society, and at such meeting the election of officers shall take place, and the persons elected shall thenceforth, until their successors are appointed, be the officers of such society. 10 Edw. VII. c. 20, s. 27.

Special meeting of directors.

28.—(1) A special meeting of the directors of any society organized under this Act may be called by the president thereof, or in his absence or on his neglect by the vice-president, or in the absence or on the neglect of the president and vice-president by any three members of such body, of which meeting at least seven days' notice shall be given to each member.

Quorum

(2) Except as otherwise provided for a majority of the directors of any society shall be a quorum. 10 Edw. VII. c. 20, s. 28.

Security by treasurer.

29.—(1) The treasurer of every society, before entering upon the duties of his office, shall give such security, either by joint or several covenant with one or more sureties or otherwise as the board of directors or other managing officers may deem necessary, for the faithful performance of his duties, and especially for the duly accounting for and paying over of all money that may come into his hands.

Duty of board as to security.

(2) It shall be the duty of every such board in each and every year to enquire into the sufficiency of the security given by such treasurer and report thereon; and where the same treasurer for any society is reappointed from year to year, his reappointment shall not be considered as a new term of office, but as a continuance of the former appointment, and any such bond or security given to the society for the faithful performance of his duties under such reappointment shall continue valid as against the parties thereto.

Personal responsibility of officers.

(3) If the officers of a society neglect to procure and maintain proper and sufficient security they shall be personally responsible for all funds of the society in the hands of the treasurer. 10 Edw. VII. c. 20, s. 29.

Municipal grants in aid of society.

30. The municipal council of any city, town, village, county or township may grant or loan money in aid of any society formed within the limits of the municipality when such society has made the returns required by this Act to be made to the Minister. 10 Edw. VII. c. 20, s. 30.

FORM 1

(Section 7.)

DECLARATION OF ASSOCIATION.

We, whose names are subscribed hereto, agree to form ourselves into a society, under the provisions of *The Horticultural Societies Act*, to be called the Horticultural Society of (*naming the point that will be the headquarters of the society*); and we hereby severally agree to pay to the treasurer the sums opposite our respective names; and we further agree to conform to the by-laws and rules of the society:

Names.

\$

cts.

6. STATISTICS.

CHAPTER 49.

An Act respecting the Registration of Births, Marriages and Deaths.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. 1. This Act may be cited as *The Vital Statistics Act*.
8 Edw. VII. c. 28, s. 1.

Interpretation. 2. In this Act,

“House.” (a) “House” shall include a part of a house and a tenement, building, room or dwelling place;

“Inspector.” (b) “Inspector” shall mean the Inspector of Vital Statistics;

“Municipality.” (c) “Municipality” shall not include a county;

“Occupier.” (d) “Occupier” shall include the governor, keeper, warden or superintendent of a gaol, prison, penitentiary, lunatic asylum, poor asylum, hospital, industrial home, and house of refuge, and of a public or private charitable institution;

“Prescribed form.” (e) “Prescribed form” shall mean the form prepared by the Registrar-General and approved by the Lieutenant-Governor in Council;

“Registrar-General.” (f) “Registrar-General” shall mean that member of the Executive Council who for the time being is charged with the administration of this Act.
8 Edw. VII. c. 28, s. 2.

Application to Indian Reserves. 3. This Act shall apply to land reserved for the Indians which, for the purposes hereof, shall be deemed territory not within a municipality. 8 Edw. VII. c. 28, s. 3.

Inspector, appointment and duties of. 4. The Lieutenant-Governor in Council may appoint an Inspector of Vital Statistics whose duty it shall be to inspect the registration offices and examine the schedules prepared under this Act to see that the entries and registrations are made and completed in a proper manner and in legible handwriting. 8 Edw. VII. c. 28, s. 4.

5. The Registrar-General shall annually collate, publish and distribute for the use of this Legislature a full report of the births, marriages and deaths of the preceding year, giving such details, statistics and information as the Lieutenant-Governor in Council may deem necessary. 8 Edw. VII., c. 28, s. 5

6. The Lieutenant-Governor in Council may make such regulations as he may deem necessary for the purpose of obtaining the information required by this Act. 8 Edw. VII. c. 28, s. 6.

7.—(1) Any person shall be entitled at all reasonable hours on payment of the prescribed fee and on signing an application in the prescribed form, to have search made of the record of a birth, marriage or death kept in the office of the Registrar-General for any one county or district for not more than three years.

(2) The Registrar-General shall, when requested, give a certificate of the details of any birth, marriage or death of which there is a record in his office on payment of the prescribed fee.

(3) The certificate shall be *prima facie* evidence in any Court, or in any proceeding before a Justice of the Peace, of the facts certified to be recorded.

(4) The fees to be paid for searches and certificates shall be prescribed by the Lieutenant-Governor in Council but shall not exceed,

(a) for a search for one registration, confined to one county or district, and a period of not more than three years, 25 cents;

(b) for a search for one registration, extending beyond one county or district, or for more than three years, \$2;

(c) for a certificate, in addition to the fee for the search, 50 cents. 8 Edw. VII. c. 28, s. 7.

8. The Registrar-General shall cause such schedules and forms to be prepared as may be approved by the Lieutenant-Governor in Council in order to obtain correct statistical information, and he shall distribute them to the Division Registrars, and the cost of and incidental thereto and of the distribution thereof shall be paid out of the Consolidated Revenue Fund. 8 Edw. VII. c. 28, s. 8.

REGISTRATION DIVISIONS.

9.—(1) All territory within Ontario shall be a part of some Registration Division.

Municipalities
to be.

Unorganized
territory.

(2) Every municipality shall be a Registration Division.

(3) Territory not within a municipality may be attached to an existing Registration Division, or set apart as a Registration Division, by the Lieutenant-Governor in Council. 8 Edw. VII. c. 28, s. 9.

Registrars in
unorganized
territory.

10. Where a Registration Division is formed of territory not within a municipality the Lieutenant-Governor in Council may appoint a Division Registrar for it and may make such regulations as he may deem necessary to secure a correct record of the births, marriages and deaths occurring therein. 8 Edw. VII. c. 28, s. 10.

OFFICE AND DUTIES OF DIVISION REGISTRARS.

Registrars in
municipalities.

11.—(1) The clerk of every municipality shall be the Division Registrar of the same.

Schedules for
division
registrars.

(2) The Registrar-General shall supply to every Division Registrar schedules in the prescribed form upon which the Division Registrar shall enter the details of every birth, marriage and death registered in his office.

Duties of
division
registrars as to
schedules.

(3) The Division Registrar shall keep every such schedule in duplicate, and on or before the 15th days of January, April, July and October in every year he shall transmit to the Registrar-General one duplicate of each schedule down to and including the last day of the month next preceding, together with the original return made by the person registering any birth, marriage or death, and the other duplicate schedule shall be kept by the Division Registrar on file in his office.

Arrangement.

(4) The duplicate schedules shall be bound up or otherwise arranged from time to time by the Division Registrar in such manner as may be prescribed.

Custody.

(5) It shall be the duty of the Division Registrar to keep the schedules, forms and documents received by him in a place of safety, and he shall use all available means to obtain the necessary information for the purpose of completing the records required to be made by him.

Duty of divi-
sion registrar
on default of
registration.

(6) If the Division Registrar has reason to believe that a birth, marriage or death has taken place within his division which has not been registered he shall inform the proper person of his duty to register the same and on failure of such person to make the registration the Division Registrar shall forthwith supply the Inspector with such information as he possesses in regard to the matter. 8 Edw. VII. c. 28, s. 11.

Certificate of
registration.

12.—(1) A Division Registrar, upon application therefor, and on payment of a fee of twenty-five cents shall give a certificate in the prescribed form as to any one registration not

included in any quarterly return made, but shall not give any certificate other than such as is authorized by this section or in any other than the prescribed form.

(2) The Division Registrar shall be entitled to the fee for the certificate for his own use. 8 Edw. VII. c. 28, s. 12.

13.—(1) If within one year from the registration of a birth, marriage or death any of the particulars thereof are found to be omitted or incorrect it shall be the duty of the proper Division Registrar upon the error being reported to him within the time aforesaid to enquire into the same, and if satisfied that the entry is incorrect to correct the error according to the fact, entering the correction in the margin, without any alteration of the original entry, and he shall note thereon the fact that the correction has been made and the date thereof.

(2) If the schedule containing a copy of the original entry has been returned to the Registrar-General the Division Registrar shall report the omission or other error to the Registrar-General, who shall correct the error in the margin of the Schedule as well as in the indexed record thereof, without altering the original entry, and shall note on them the fact that the correction has been made and the date thereof. 8 Edw. VII. c. 28, s. 13.

REGISTRATION OF BIRTHS.

14. Every legally qualified medical practitioner who attends at the birth of a child shall forthwith give notice thereof in the prescribed form to the Division Registrar of the Division in which the child was born. 8 Edw. VII. c. 28, s. 14.

15.—(1) Where a child is born notice thereof in the prescribed form shall also be given to the Division Registrar of the Division in which the child was born by

- (a) the father, if living; or
- (b) in case of his inability, or if he is dead, by the mother, if living; or
- (c) in case of the inability of both parents, or, if neither be living, by the person standing in the place of the parents of the child; or
- (d) if there is no father or mother or other person whose duty it is to give the notice, by the occupier of the house in which the child was born, if he has knowledge of the birth, and by the nurse or midwife present at the birth.

(2) The notice shall be given within thirty days after the date of the birth. 8 Edw. VII. c. 28, s. 15.

Registration of
birth of new-
born child
found exposed.

Imp. 37-38
V. c. 88, s. 3.

16. If a living new-born child is found exposed it shall be the duty of any person finding such child, and of any person in whose charge such child may be placed, to give, to the best of his knowledge and belief, to the Division Registrar of the Division in which the child is found, within seven days after the finding of such child, such information of the particulars required to be registered concerning its birth as the informant possesses. 8 Edw. VII. c. 28, s. 16.

Registering
illegitimate
births.

17. A person shall not be named in the register as the father of an illegitimate child unless he and the mother request that the name be so entered, and the Division Registrar shall write the word "Illegitimate" in the column for the name of the child immediately under the child's name. 8 Edw. VII. c. 28, s. 17.

Registration of
birth within
one year.

18. The Division Registrar may register a birth at any time within one year after the birth occurred. 8 Edw. VII. c. 28, s. 18.

Registration
of birth after
expiration
of appointed
time.

19. The Lieutenant-Governor in Council may make regulations for the registration of births which have not been registered under the foregoing provisions of this Act. 8 Edw. VII. c. 28, s. 19.

Altering or
inserting name
after registra-
tion of birth.

20.—(1) Where the birth of a child is registered and the name of the child is afterwards changed, or if it was registered without a name, when a name is given to the child, the parent or guardian of the child or other person procuring the name to be changed or given may within ten years next after the registration of the birth, or at any time before the child attained his majority, deliver to the Registrar-General a certificate signed by the minister or person who performed the rite of baptism upon which the name was changed or given, or if the child has not been baptized signed by the father, mother or guardian of the child, or other person procuring the name of the child to be changed or given, and the Registrar-General, upon the receipt of the certificate, may make the necessary alteration in the margin of the schedule containing the original entry, without altering the original entry, and shall note thereon the fact that the change has been made and the date thereof and shall also make the same changes in the indexed record. 8 Edw. VII. c. 28, s. 20; 2 Geo. V. c. 17, s. 8, *part*.

Evidence.

Where
certificate
cannot be
obtained.

(2) If the Registrar-General is satisfied that the certificate mentioned in subsection 1 cannot be obtained he may make the alteration on such proof of the change as he may deem sufficient. 2 Geo. V. c. 17, s. 8, *part*.

REGISTRATION OF MARRIAGES.

Duty to
report.

21.—(1) Every person who solemnizes a marriage shall report the same to the Division Registrar of the division

within which the marriage was solemnized within thirty days thereafter with the particulars required in the prescribed form, which form shall be furnished to him by the Division Registrar, but in the case of a marriage solemnized under the authority of a license or certificate it shall be sufficient to report the same on the form attached to the license or certificate. 8 Edw. VII. c. 28, s. 21 (1) ; 1 Geo. V. c. 17, s. 7.

(2) The Lieutenant-Governor in Council may make regulations for the registration of marriages which have not been registered under the foregoing provisions of this Act. Regulations for registration after thirty days. 8 Edw. VII. c. 28, s. 21 (2).

REGISTRATION OF DEATHS.

22.—(1) The occupier of a house in which a person dies, or if the occupier be the person who has died then every adult person residing in the house in which the death took place, or if the death has not taken place within a house then every person present at the death or having any knowledge of the circumstances attending the same, or the coroner who views the body and the legally qualified medical practitioner last in attendance during the last illness of the person who has died shall before the interment supply to the Division Registrar of the division in which the death took place, according to the best of his knowledge and belief, all the particulars required to be registered touching such death, in the prescribed form. Particulars to be furnished to registrars.

(2) Where a death has occurred in a township or territory without municipal organization the return may be made to the nearest Division Registrar who, upon the payment of a fee of twenty-five cents by the applicant, shall register the same on the special form of schedule provided and issue a certificate of registration which certificate shall be sufficient, and such Division Registrar shall forward the return to the Division Registrar of the Division in which the death occurred. Returns in unorganized territory.

(3) The Division Registrar issuing the certificate, as set forth in subsection 2, shall be entitled to the fee for his own use. Fee.

(4) Where upon proper representation to the Registrar-General he is of the opinion that in any section of Ontario the registration of deaths for purposes of burial would be facilitated he may appoint a Sub-Registrar for the special purpose of issuing certificates of registration of death upon payment by the applicants of a fee of twenty-five cents. Sub-registrar.

(5) The Sub-Registrar shall register the death upon the special form of schedule provided, and shall forthwith transmit the original form to the Division Registrar of the municipality in which the death occurred for registration by him, and the Sub-Registrar shall make quarterly returns to the Registration and return of sub registrar.

Registrar General in compliance with section 11 of this Act. 8 Edw. VII. c. 28, s. 22.

Forms for returns.

23. The forms on which such return shall be made shall be furnished by the Registrar-General to the Division Registrar who shall supply the same to the legally qualified medical practitioners resident in his Division. 8 Edw. VII. c. 28, s. 23.

Certificate for burial in case of death outside Ontario, etc.

24. Where the death has occurred out of Ontario, or the burial is to take place in a municipality other than that in which the death is to be registered, a certificate signed by the Registrar or other proper officer of the municipality or place in which the death occurred shall be sufficient for burial, and the Division Registrar of the municipality in which the burial takes place shall, when requested, receive the certificate and transmit it to the Registrar-General. 8 Edw. VII. c. 28, s. 24.

Duties prior to burial.

25. A removal for burial or an embalming of the body of any person shall not take place, and an undertaker, clergyman, sexton, householder or other person shall not engage in the burial of the body unless a certificate of registration has been previously obtained from the Division Registrar with whom the death was registered to the knowledge of the person so removing, embalming or engaging in the burial of the body. 8 Edw. VII. c. 28, s. 25.

Certificate of death.

26. A Division Registrar shall, immediately upon registering any death, deliver without charge to any person requiring the same for the purpose of burial a certificate in the prescribed form that the death has been duly registered. 8 Edw. VII. c. 28, s. 26.

Duties of persons in charge of cemeteries.

27.—(1) A caretaker or owner of a cemetery or burial ground, whether public or private, or a clergyman or other person having charge of a church to which a cemetery or burial ground is attached, shall not permit the interment of the body of any person in the cemetery or burial ground over which he has charge unless he has received a certificate under the hand of the proper Division Registrar that the particulars of the death have been duly registered.

Returns by caretakers, etc., of cemeteries.

(2) Every such caretaker, owner, clergyman or other person shall on or before the tenth day of January, April, July and October in each year transmit to the Division Registrar of the Division in which the cemetery or burial ground is situate a return in the prescribed form of the burials therein during the previous three months up to and including the last day of the month next preceding for subsequent transmission with the quarterly return to the Registrar-General. 8 Edw. VII. c. 28, s. 27.

Registration of death after burial.

28.—(1) Where burial has taken place without registration the death may be registered, but registration shall not

take place after two years from the death without the written consent of the Registrar-General.

(2) Registration shall not take place in the case of a body found elsewhere than in a house where a certificate has been given by a Coroner without the like consent of the Registrar-General. Where body found elsewhere than in house.

(3) The fact of such consent having been given shall be entered in the proper column of the register. 8 Edw. VII. c. 28, s. 28. Entry of Registrar General's consent.

REGISTRATION BY REGISTRAR-GENERAL WHERE ACT NOT COMPLIED WITH.

29.—(1) The Registrar-General may register a birth which has not been registered in accordance with section 18 if the information is furnished in accordance with the provisions of this Act, and the registration shall be made in the proper register, and the date of registration shall be entered in the proper column of the register. Registration of births after default.

(2) Where the registration of a marriage has not been made, as provided by section 21, the Division Registrar of the Division in which the marriage was solemnized may register the same at any time after the solemnization of the marriage if the information is furnished in accordance with the provisions of this Act, and the registration shall be made in the schedules of the current quarter. Registration of marriages after default.

(3) After the expiration of twelve months from the solemnization of the marriage registration shall only be made by the Registrar-General, if the information is furnished in accordance with the provisions of this Act, and the entry of registration shall be made in the proper register, and the date of registration shall be entered in the proper column of the register. Conditions of registration after twelve months.

(4) The Registrar-General may register a death which has not been registered by a Division Registrar in accordance with section 28 if the information is furnished in accordance with the provisions of this Act, and the registration shall be made in the proper register, and the date of registration shall be entered in the proper column of the register. 1 Geo. V. c. 17, s. 8. Registration of death after default.

PENALTIES AND EXPENSES.

30. If a Division Registrar neglects to make any return, as required by this Act, he shall be notified by registered letter of such neglect by the Registrar-General, and if after notification he fails to make such return within one month the Registrar-General may refuse to issue the certificate for the payment of the fees due to the Division Registrar even though Penalty for registrar's neglect to make returns.

the return should be made at a later date, and such Division Registrar shall also incur a penalty of \$50. 8 Edw. VII. c. 28, s. 29.

Penalty for making false statements.

31. A person who wilfully makes or causes to be made a false statement touching any of the particulars required to be reported and entered under this Act shall incur a penalty of \$50; and a legally qualified medical practitioner wilfully making a false statement as to the cause of death of any person shall also be subject to discipline by the Ontario Medical Council. 8 Edw. VII. c. 28, s. 30.

Penalty for not reporting.

32.—(1) A person required by this Act to report a birth, marriage, death or burial to the Division Registrar who neglects to do so shall incur a penalty not exceeding \$10.

Saving.

(2) If a return required by this Act to be made by more than one person is made by any one of such persons the others shall not be liable to the penalty.

Returns of medical practitioner.

(3) Subsection 2 shall not apply to a return required to be made by a legally qualified medical practitioner. 8 Edw. VII. c. 28, s. 31.

Penalty for other acts or omissions.

33. A person guilty of an act or omission in violation of any of the provisions of this Act for which no other penalty is provided shall incur a penalty of not more than \$20. 8 Edw. VII. c. 28, s. 32.

Duty of Inspector to investigate.

34. The Inspector, upon being notified of any violation of this Act, shall make investigation, and where he deems it necessary, or without investigation when directed by the Registrar-General, he shall institute proceedings against any person guilty of any such violation. 8 Edw. VII. c. 28, s. 33.

Penalties how recovered. Rev. Stat. c. 90.

35. The penalties imposed by this Act shall be recoverable under *The Ontario Summary Convictions Act*. 8 Edw. VII. c. 28, s. 34.

Penalties, distribution of.

36. The penalties shall be payable one moiety to the informant and one moiety to the municipality in which the offence was committed. 8 Edw. VII. c. 28, s. 35.

Time for commencement of prosecution.

37. Prosecutions for penalties imposed by this Act shall be commenced within one year after the offence or default. 8 Edw. VII. c. 28, s. 36.

Conduct of prosecutions.

38. Prosecutions for any penalty imposed by this Act shall be conducted by the Crown Attorney when instructed by the Registrar-General. 8 Edw. VII. c. 28, s. 37.

Expenses of prosecution.

39. All expenses of prosecutions under this Act not recovered from the offender, and whether or not a conviction is

obtained, shall be payable by the municipality in which the offence was alleged to have been committed. 8 Edw. VII. c. 28, s. 38.

FEEES.

40.—(1) Every municipality shall pay annually, on the first day of February, to the Division Registrar thereof a fee of twenty cents for each complete registration of a birth, marriage or death returned for the preceding year according to the schedules provided under this Act, on the presentation of the certificate of the Registrar-General to the treasurer of the municipality; but a city or town containing more than ten thousand inhabitants may by by-law limit the aggregate compensation allowed to the Division Registrar. Fees of division registrars.

(2) Fees shall be paid at the rates set forth in this section to every Division Registrar appointed by the Lieutenant-Governor in Council for any Registration Division not included within any municipality out of any money appropriated for that purpose. 8 Edw. VII. c. 28, s. 39. Fees of registrars in unorganized territory.

SECTION VI.

PUBLIC PARKS.

CHAPTER 50.

An Act respecting The Queen Victoria Niagara Falls Park.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title. **1.** This Act may be cited as *The Queen Victoria Niagara Falls Park Act*. 10 Edw. VII. c. 21, s. 1.
- Board of Commissioners. **2.**—(1) The Lieutenant-Governor in Council may appoint a Board of Commissioners, composed of not less than five persons, which board shall be a corporation by the name of “The Commissioners for the Queen Victoria Niagara Falls Park.”
- Tenure. (2) The members of the board shall hold office during pleasure.
- Compensation. (3) The Commissioners shall receive their actual disbursements, but no compensation. 10 Edw. VII. c. 21, s. 2.

PART I.

QUEEN VICTORIA NIAGARA FALLS PARK.

- Boundaries of Park. **3.**—(1) The land in the vicinity of Niagara Falls selected by the Commissioners and approved by the Lieutenant-Governor in Council, whereof the boundaries as surveyed upon the ground are shown by a red verge line marked upon a map, whereof copies duly certified and authenticated are filed and deposited in the office of the Registrar of the County of Welland and in the Department of Lands, Forests and Mines, excepting thereout the strip of land lying between Range No. 6 as laid down in the plan of the City of the Falls, in the Township of Stamford, on the north, and by Street’s Mill Road and the land held by the Carmelite Monastery on the south, the easterly boundary whereof is at a distance of 130

feet east of the centre line of the Canada Southern Railway, and the westerly boundary whereof is the westerly line of the Park as marked upon the map, shall constitute "The Queen Victoria Niagara Falls Park," and shall be vested in the Corporation as trustees for Ontario.

(2) Until the municipal corporation otherwise enacts by Entrances.
by-law, passed in compliance with section 472 of *The Municipal Act*, Robinson and Murray Streets shall be public en-
trances to the Park for visitors in carriages or on horses or Rev. Stat.
on foot. 10 Edw. VII. c. 21, s. 3. c. 192.

4. The land lying along the bank of the Niagara River, Lands along
and not included in the original survey of lots laid out in river bank.
the Townships of Stamford and Niagara, which have by
order of the Lieutenant-Governor in Council been vested in
the Commissioners to be held for the purposes of the Park,
and commonly known as "The Chain Reservation," shall
form part of the Park and be subject to the control of the
Commissioners as other lands within the boundaries of the
Park. 10 Edw. VII. c. 21, s. 4.

5. The Lieutenant-Governor in Council may also vest in Foreshores
the Commissioners, to be held for the purposes of the Park and part of
and subject to any conditions which may be imposed by bed of Niagara
Order in Council, any portions of the foreshores or bed of river.
the River Niagara or land covered with water in the River
Niagara, which lie in front of the land vested in the Com-
missioners by section 3, and which at the time of the Order
in Council are the property of Ontario, and the foreshores,
bed of the river and lands so vested shall thenceforth form
part of the Park and be subject to the control of the Com-
missioners as other Park lands. 10 Edw. VII. c. 21, s. 5.

6.—(1) The rights, title, possession and franchises which Rights of St.
were held and exercised by the St. Catharines, Thorold, and Catharines,
Niagara Falls Road Company, or by the persons having the Thorold &
title, interest and possessory rights thereof in respect of that Niagara
portion of the St. Catharines, Thorold, and Niagara Falls Falls Road
Road, between the Table Rock and Niagara Falls Suspension Co. vested
Bridge on lot 92 of Stamford, are also vested in the Commis- in commis-
sioners. sioners.

(2) All rights to take and collect tolls, as well as the Tolls.
public rights in the portion of the St. Catharines, Thorold,
and Niagara Falls Road, within the limits of the Park, as
shown upon the plan, are extinguished. 10 Edw. VII. c. 21,
s. 6.

7. The Commissioners shall have power to construct and Power to
operate a street railway over such road, and may build street
the same to any points or lands vested in the Commissioners; railway.
and tolls on any such railway may be charged as provided by
sections 13 and 15. 10 Edw. VII. c. 21, s. 7.

Powers of ex-
propriation.

8. The Commissioners shall have power to expropriate, in accordance with section 10, the interest of any person in any land lying between the river and the road built on the Chain Reservation and vested in the Commissioners under the authority of this or any other Act. 10 Edw. VII. c. 21, s. 8.

Power to
acquire lands
for ap-
proaches,
roads, etc.

9.—(1) The Commissioners, with the consent of the Lieutenant-Governor in Council, may enter upon, take, use or acquire such lands, tenements and rights as they think expedient to be acquired for the purpose of making, forming and completing any new roads, avenues or approaches to the Park; but, except where the lands, tenements, or rights to be acquired are for the purpose of opening or widening a highway, the Commissioners shall not take any land for the purposes aforesaid without the consent of the parties interested therein.

Use of
such high-
way,—
restrictions
on.

(2) A highway so opened or widened shall not be used or occupied as a stand by vehicles kept for hire, or by booths or stands for the sale of newspapers, or photographs, or for the carrying on of a refreshment business or the like. 10 Edw. VII. c. 21, s. 9.

Procedure to
acquire land,
etc.

10.—(1) Whenever the Commissioners are authorized by the Lieutenant-Governor in Council to enter upon, take, use or acquire any lands, tenements or rights under the provisions of sections 8, 9 or 12, the Commissioners in respect thereof shall have the powers and shall proceed in the manner provided by *The Ontario Public Works Act* where the Minister of Public Works takes land or property for the use of Ontario, and the provisions of that Act shall *mutatis mutandis* apply.

Rev. Stat.
c. 35.

To what
extended.

(2) The compulsory powers conferred by this Act shall extend to land, works, rights, powers, privileges and property notwithstanding that the same are or may be deemed to be devoted to the public use or that the owner thereof possesses the power to take lands compulsorily. 10 Edw. VII. c. 21, s. 10.

Charge of
debentures
on revenue.
50 V. c. 13.

11.—(1) The debentures, amounting to \$525,000, issued by the Commissioners under the authority of *The Queen Victoria Niagara Falls Park Act, 1887*, and countersigned by the Treasurer of Ontario, and guaranteed by order in Council, shall, equally and without preference of one over another, be a charge on all the revenues of the Corporation, and subject thereto the further issue amounting to \$75,000, subsequently issued by the Commissioners under the authority of *The Act respecting the Queen Victoria Niagara Falls Park*, passed in the fifty-seventh year of the reign of Her late Majesty Queen Victoria, countersigned and guaranteed as aforesaid, shall also equally, and without preference of one over another, be a charge on such revenues.

57 V. c. 13.

(2) The debentures being so issued and countersigned shall be conclusive of the same having been issued in pursuance of the said Acts and of the same being guaranteed by the Province of Ontario. Validity of debentures.

(3) The debentures and the coupons for interest annexed thereto shall be transferable by delivery. 10 Edw. VII. c. 21, s. 11. Transfer.

12.—(1) Subject to the debentures issued and secured under section 11, in the order of charge thereby enacted, the Commissioners may, with the approval of the Lieutenant-Governor in Council, issue further debentures to an amount not exceeding in all \$300,000 for improvements, and the appropriation and application of the proceeds, the form and effect of the debentures, their payment with interest, as also the security guarantee and negotiability thereof shall be as provided by section 11 with respect to the debentures therein mentioned. Power to issue further debentures.

(2) The proceeds of the further debentures mentioned in subsection 1 shall be applied by the Commissioners primarily towards the preservation of the bank of the Niagara River, between Fort Erie and the southerly boundary of the Park proper against erosion, wash or other action by nature affecting or which may affect the same, and the construction of an esplanade on and along such bank for public purposes and of such width as may be determined, and for the purchase of such land as may be necessary or the acquisition thereof by expropriation in accordance with the powers exercisable by the Commissioners under this Act. The holders of the debentures shall not be required to see to the application of the proceeds. Application of proceeds of further issue.

(3) A plan and survey shall be made of the land which the Commissioners propose to purchase, take or acquire under the powers conferred by subsection 2. Plan.

(4) The plan shall be approved and certified by the Commissioners who shall keep one copy thereof on file in their office, and a duplicate shall be deposited in the office of the Minister of Public Works. Approval.

(5) If any alterations in the plan or survey of the land proposed to be taken are deemed advisable the Commissioners may make the same, and a plan in duplicate, showing such alterations on the same scale and containing the same particulars as the original plan and survey shall be deposited and kept in the same manner as the original plan and survey. Alterations in plan.

(6) A copy of any such plan or survey, certified by the chairman under the corporate seal of the Commissioners, shall be evidence that the original thereof was deposited at the time certified thereon and shall be *prima facie* proof of the original so deposited and that the same was signed, cer- Effect as evidence.

tified or otherwise approved of by the Commissioners in the manner in which the same purports to be signed and certified, and that the same was prepared and approved by the Commissioners. 10 Edw. VII. c. 21, s. 12.

Powers of
Commissioners.

13.—(1) Subject to any direction of the Lieutenant-Governor in Council, the Commissioners may

- (a) construct and operate inclined planes and hydraulic or other lifts, to be worked by any power; and may build and operate boats or vessels to be used in connection with the Park;
- (b) pull down all houses and other erections and buildings on lands acquired, and purchased by the authority of this Act, or such of them or such part thereof as they shall think proper to be pulled down, and level and clear the ground whereon the same stand, in such manner as they think proper, and sell the materials of the houses and other buildings to be taken down and removed; and the money to be produced by the sale thereof, after deducting expenses, and also the rents and profits to which they may be entitled meantime, shall be applied in carrying out the purposes of this Act;
- (c) lay out, plant and enclose the Park in such manner as they think fit, and improve and develop the same in accordance with the objects of this Act;
- (d) take and collect tolls for the use of constructions, appliances, vessels, or works required to afford facilities to visitors to reach and view the points of interest within the Park, and involving the expenditure of money in construction and maintenance, as well as for services to be rendered for the convenience or accommodation of visitors;
- (e) make orders and regulations for opening and closing the gates and entrances of the Park, at such hours as they think fit, but so as not to interfere with or affect an agreement heretofore entered into between the Commissioners and the Canada Southern Railway Company. 10 Edw. VII. c. 21, s. 13.

Park to be a
Public Work.

14. All works or land whereon any expenditure is authorized in pursuance of this Act shall be deemed and are declared to be Public Works of Ontario notwithstanding that they are in the care or charge of the Commissioners. 10 Edw. VII. c. 21, s. 14.

Approval of
plans, tolls
and by-laws
subject to.

15. No by-law, plan of works proposed, tariff of tolls or payment for the use of works, vessels or services, shall be acted upon until approved by the Lieutenant-Governor in Council. 10 Edw. VII. c. 21, s. 15.

16. The Park grounds shall be open to the public, subject to any rules and regulations as to management approved by the Lieutenant-Governor in Council. 10 Edw. VII. c. 21, s. 16. Grounds open to public.

17.—(1) Subject to the approval of the Lieutenant-Governor in Council, the Commissioners may make by-laws for the use, government, control and management of the Park, and for the protection and preservation of all works of the same from injury, and of the trees, shrubs, walks, seats, gates, fences and palings, and all other parts thereof, and for the exclusion of improper persons from the same, and may by any such by-law impose a penalty, not exceeding \$20, for any breach thereof. Powers of commissioners as to by-laws.

(2) Any offence against any such by-law shall be punishable upon summary conviction under *The Ontario Summary Convictions Act*. 10 Edw. VII. c. 21, s. 17. Offences against by-laws. Rev. Stat. c. 90.

18.—(1) The Commissioners may appoint such officers as may be required for the superintendence and management of the Park, and may also appoint Park keepers and other officers to preserve order in the Park, and may dismiss any persons so appointed. Park officers.

(2) Such appointments or dismissals shall be subject to the approval of the Lieutenant-Governor in Council. Appointment, etc.

(3) The salaries of such officers shall be payable out of any funds in the hands of the Commissioners. Salaries.

(4) The Commissioners may employ gardeners and workmen, as they may deem necessary, and may dismiss or dispense with the services of such persons, subject to any directions of the Lieutenant-Governor in Council. 10 Edw. VII. c. 21, s. 18. Gardeners and workmen.

19. The Commissioners shall cause books to be provided and true and regular accounts to be entered therein of all money received and paid, and of the several purposes for which the same was received and paid; and such books shall at all times be open to the inspection of any of the Commissioners, and of the Treasurer of Ontario, and of any person appointed by the Commissioners or Treasurer for that purpose, and of any other person appointed by the Lieutenant-Governor; and any Commissioner and any such person may take copies of or extracts from such books. 10 Edw. VII. c. 21, s. 19. Books of account.

20. Any person entrusted by the Commissioners with the custody or control of money, by virtue of his employment, shall give security in the manner and form provided by *The Public Officers Act*. 10 Edw. VII. c. 21, s. 20. Security by officers. Rev. Stat. c. 15.

Revenue and
rental payable
by certain
power com-
panies.

21.—(1) The revenues and rentals payable or collectable under the several agreements made by and between the Commissioners acting on their own behalf and with the approval of the Government of the Province of Ontario and the Canadian Niagara Power Company, the Ontario Power Company of Niagara Falls, and the Electrical Development Company of Ontario, Limited, shall be applied:—

(a) To the payment half-yearly of the interest payable on the debentures issued by the Commissioners, namely, such as are described in section 11, and such as have been issued or are issuable under section 12, in all \$900,000;

(b) To provide a sinking fund at the rate of one per cent. per annum on the entire amount of the debentures. 10 Edw. VII. c. 21, s. 21 (1).

Sinking
fund.

(2) The application of the sinking fund in respect of said debentures shall be as provided by section 26. 10 Edw. VII. c. 21, s. 21 (2); 3-4 Geo. V. c. 14, s. 1.

Collection and
application
thereof.

22. Subject to any direction or order of the Lieutenant-Governor in Council, and to the provisions of this Act, the Commissioners may continue to collect the revenues and rentals in the next preceding section mentioned, and for the years 1910 to 1917, both inclusive, and shall apply the same in accordance with the provisions of that section. 10 Edw. VII. c. 21, s. 22; 3-4 Geo. V. c. 14, s. 2.

Application of
revenue.

23. The revenue received from the sources authorized by this Act and any excess of revenue received under the next two preceding sections shall be applied as follows:—

1st. To the necessary outgoing expenses of all works necessary to the preservation, improvement, and maintenance of the Park, and to the payment of the salaries of the officers and others employed by the Commissioners, and other incidental expenses;

2nd. To the payment half-yearly of the interest payable on the debentures issued by the Commissioners;

3rd. To provide a sinking fund at the rate of one per cent. per annum on the entire amount of the debentures issued as aforesaid. 10 Edw. VII. c. 21, s. 23.

Approval
of estimates.

24. Before any expenditure on capital account is made out of such revenues and rentals in respect of any works within the Park, or on premises under the control of the Commissioners, the estimates therefor shall be submitted to and approved of by the Lieutenant-Governor in Council. 3-4 Geo. V. c. 14, s. 3.

Appropriation
of
certain
revenues.

25. All revenues and rentals which are not required for the purposes set out in sections 21 and 23, shall on or before the first of July in each year be paid over by the Commission-

ers to the Treasurer of Ontario, and shall form part of the Consolidated Revenue Fund of Ontario. 3-4 Geo. V. c. 14, s. 4.

26. The annual sums for the sinking fund shall be remitted ^{Application of sinking fund.} by the Commissioners to the Treasurer of Ontario by half-yearly payments in such manner as the Lieutenant-Governor in Council may direct. 10 Edw. VII. c. 21, s. 24.

27.—(1) The Commissioners shall make an annual report ^{Annual report and accounts.} for the information of the Legislature, setting forth the receipts and expenditure of the year, and such other matters as may appear to them to be of public interest in relation to the Park, or as the Lieutenant-Governor in Council may direct.

(2) Sections 11 and 29 to 31 of *The Audit Act* shall apply ^{Application of the Audit Act.} to the accounts of the Commissioners in respect of receipts and expenditures. 10 Edw. VII. c. 21, s. 25.

28.—(1) The Commissioners may empower the Clifton Suspension Bridge Company to operate their cars by any ^{Operating cars across the Clifton Suspension Bridge.} power, except steam, to and from their bridge across the Chain Reservation, subject to any order of the Board of Railway Commissioners of Canada in that behalf, and subject to the rights, if any, of the Niagara Falls Park and River Railway Company, and to the terms of any agreement made with such company.

(2) Any agreement between the Commissioners and the Clifton Suspension Bridge Company heretofore made which, ^{Agreement heretofore made.} if made hereafter would be authorized by this section, is confirmed as if made after the passing of this Act. 10 Edw. VII. c. 21, s. 26.

29. Subject to the approval of the Lieutenant-Governor in Council, the Commissioners may, upon terms to be agreed on, grant to the Clifton Suspension Bridge Company, or any other duly incorporated bridge company, any rights over or in respect of lands held by the Commissioners which may be required for the purposes of building any new bridge over the Niagara River, or of confirming the present occupation of land by any bridge company now existing, but this shall not authorize the granting of any rights for the purpose in this ^{Granting rights over lands to Clifton Suspension Bridge companies.} section mentioned, through the lands vested in the Commissioners by section 3. 10 Edw. VII. c. 21, s. 27.

30. Subject to the approval of the Lieutenant-Governor in Council, the Commissioners may grant to the Clifton Suspension Bridge Company a strip of land from the Chain Reservation along the Niagara River and abutting the land in ^{Grant of strip to Clifton Suspension Bridge Company.} occupation of the company. 10 Edw. VII. c. 21, s. 28.

Agreement for
surrender of
powers of
Canadian
Niagara
Power Co.

31. The Commissioners, with the approval of the Lieutenant-Governor in Council and the Canadian Niagara Power Company, may enter into an agreement for the surrender and abandonment of the sole or exclusive right to use the waters of the Niagara River within the limits of the Park granted by the agreement bearing date the seventh day of April, 1892, and set out in Chapter 8 of the Statutes of Ontario, 1892, upon such terms and conditions as to abatement of rent, the extension of time for the completion of the contract under the agreement, or any variation of such contract, and for other purposes in connection therewith as may to the Commissioners and the Lieutenant-Governor in Council appear to be necessary or in the public interest, and any such agreement so entered into shall be binding and effectual according to its terms. 10 Edw. VII. c. 21, s. 29.

Agreements
with other
companies.

32. The Commissioners, with the approval of the Lieutenant-Governor in Council, may enter into an agreement or agreements with any person or corporation to take water from the Niagara River or from the Niagara and Welland Rivers at certain points within or without the Park for the purpose of enabling such person or corporation to generate within or without the Park electricity, pneumatic, hydraulic or other power, conducting and discharging such water through and across the Park or otherwise, in such manner, for such rental, and upon such terms and conditions as may be embodied in the agreement, and as may appear to the Lieutenant-Governor in Council to be in the public interest, including provisions for the removal or demolition of any houses, buildings or structures and the re-erection of the same, or the erection of other houses, buildings or structures instead thereof; but no such agreement shall be operative unless and until ratified and confirmed by resolution of the Assembly. 10 Edw. VII. c. 21, s. 30.

Expenditure
made under
3 Edw. VII. c. 6.

33. Any expenditure which the Commissioners may have made or incurred or in pursuance of section 14 of the Act passed in the third year of the reign of His Majesty King Edward the Seventh, chaptered 6, intituled *An Act providing for the Construction of Works of Improvement along the Bank of the Upper Niagara River*, shall be discharged by the application of money to be raised on the debentures authorized under this Act, as the Lieutenant-Governor in Council may determine. 10 Edw. VII. c. 21, s. 31.

PART II.

BUTLER'S BURYING GROUND.

Power to
acquire
Butler's
burying
ground.

34.—(1) The Commissioners shall have power to acquire the land set apart as a burying ground wherein the remains of Colonel John Butler and other officers and men of the corps known as Butler's Rangers were interred, and described as:—

All that certain parcel or tract of land situate in the Township of Niagara, in the County of Lincoln, containing two rods and thirty-six perches, more or less, and being part of a certain tract of land containing one hundred and fifteen acres, more or less, granted by patent from the Crown, bearing date the fifth day of February, one thousand eight hundred and three, to one Andrew Butler, gentleman, and described as follows:—Commencing in survey at the distance of eighty-six chains from what is called the Mile tree, on the Garrison Line, on a course bearing north seventeen degrees west, and which said two rods and thirty-six perches are butted and bounded or may be otherwise known as follows, that is to say: commencing at a stone monument marked G.Y., at the southeast angle of the graveyard, thence north eight degrees forty minutes east two chains, thence north forty-nine degrees west along the bottom of the hill two chains, thence south seventy-one degrees west one chain seventeen links, thence south ten degrees west three chains fifty links, thence north seventy degrees east one chain sixty-one links to the place of beginning.

(2) Where the boundaries of such land have become ^{Idem.} obliterated the Commissioners shall have power to acquire such parcels of land as they shall determine with the aid of an Ontario Land Surveyor to be identical, or as nearly as may be identical, with such burying ground.

(3) The Commissioners shall have power to acquire road- ^{And roadways.} ways not exceeding forty feet in width from any of the roads in the neighbourhood of the burying ground.

(4) Upon acquiring such land, or any part thereof, from ^{Title.} any person now in possession of the same or of any part thereof, claiming title by prescription or by conveyance from a person claiming title by prescription, and showing such title to the satisfaction of the Commissioners, a valid title to such land shall be vested in the Commissioners.

(5) With the consent of the Lieutenant-Governor in Council, the Commissioners may acquire other adjacent ^{Other adjacent lands,} land.

(6) The Commissioners in respect of such land and ways, shall have powers for the acquisition, management, control ^{General powers in relation thereto.} and improvement thereof similar to those conferred by Part I. 10 Edw. VII. c. 21, s. 32.

35. Nothing in the next preceding section shall authorize the interference with any existing right to inter the body of any deceased person in such burying ground, nor shall anything herein confer the right to remove any body there interred, but, subject to the provisions of this section, the Commissioners shall have the right to enter upon, put in order, maintain and keep in repair such burying ground. ^{Rights of interment not affected.} 10 Edw. VII. c. 21, s. 33.

PART III.

DRUMMOND HILL BURYING GROUND AND LUNDY'S LANE BATTLEFIELD AND CEMETERY.

Drummond Hill burying ground and Lundy's Lane Battlefield and cemetery vested in commissioners.

36.—(1) The interest of the Crown in the land set apart as a burying ground and battlefield, and sometimes known as Drummond Hill Burying Ground and Lundy's Lane Battlefield and Cemetery, is vested in the Commissioners; being all and singular those certain parcels or tracts of land and premises, situate, lying and being in the City of Niagara Falls in the County of Welland, and being composed of Lot Number Six on the south side of Lundy's Lane between Victoria Street and Main Street, and Lot Number "C" in the rear thereof, and part of Lot Number Five on the east side of Victoria Street or Concession Road between Lundy's Lane and Barker Street, all being shown on Plan Number 653 registered for the City of Niagara Falls, and which may be more particularly described as follows:—

Commencing on the south side of Lundy's Lane at the northeasterly angle of Lot Number Six, thence southerly along the easterly limit of Lot Six and Lot "C" four hundred and forty feet ten and one-half inches more or less to the south-east angle of Lot "C"; thence westerly along the southerly limits of Lot "C" and Lot Five four hundred and seventy-four feet six and one-half inches more or less to a point one hundred and sixty-seven feet, seven and one-half inches westerly from the southeast angle of Lot Number Five; thence northerly and parallel with Victoria Street two hundred and fifty-nine feet ten and one-half inches more or less to the southwest corner of the Presbyterian Church property; thence easterly along the southerly limit of the said Presbyterian Church property one hundred and sixty-seven feet seven and one-half inches more or less to the southeast angle of the said church property, being also the northeast angle of Lot Number Five; thence northerly along the easterly boundary of the said church property one hundred and eighty-one feet more or less to Lundy's Lane; thence easterly along south side of Lundy's Lane three hundred and six feet eleven inches more or less to the place of beginning. 10 Edw. VII. c. 21, s. 34 (1); 2 Geo. V. c. 17, s. 9, *part*.

(2) The Commissioners in respect of such land shall have powers for the management, control and improvement thereof similar to those conferred by Part 1. 10 Edw. VII. c. 21, s. 34 (2); 2 Geo. V. c. 17, s. 9, *part*.

Existing rights as to burial preserved.

37. Nothing in the next preceding section shall authorize the interference with any existing right to inter the body of any deceased person in such burying ground, nor shall anything herein confer the right to remove any body there interred; but, subject to the provisions of this section, the Commissioners shall have the right to enter upon, put in order, maintain and keep in repair such burying ground. 10 Edw. VII. c. 21, s. 35.

CHAPTER 51.

An Act respecting The Queenston Heights Park.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Queenston Heights Park* Short title. Act. 8 Edw. VII. c. 32, s. 1.

2. The parcels of land following:—

Park estab-
lished.

- (a) The ordnance land surrounding Brock's Monument at Queenston in the Township of Niagara, in the County of Lincoln, containing by admeasurement thirty-one acres, be the same more or less as described in Letters Patent under the Great Seal of Canada, dated 5th May, 1896.
- (b) The parcel of land in the Village of Queenston in the Township of Niagara and County of Lincoln, containing by admeasurement 236-1,000 of an acre, be the same, more or less, which land was on 21st August, 1896, conveyed by deed to the Commissioners for the Queen Victoria Niagara Falls Park, registered in the office of the Registrar for the County of Lincoln as Number 3,435 at 10 a.m. of the 28th August, 1896;
- (c) The parcel or tract of land, in the township and county aforesaid, being composed of part of lot number three in the broken front concession, and part of that portion of the Military Reserve purchased by Messrs. Gzowski and Company, from the War Department, containing twelve acres and one-half be the same more or less adjacent to the above mentioned monument land on the south;
- (d) The parcel or tract of land in the township and county aforesaid, being composed of part of lot number four in such township containing ten acres more or less adjacent to the monument lands on the north, save and except thereout a strip of land sixty-six feet wide, for the right of way of the International Railway Company, the centre line of which right of way may be described as follows: Beginning at a point on the southerly side of York Street at a distance westerly from the

northwest corner of the land above described of five chains ten links more or less, thence on a curve of 200 feet radius to a point on the southerly limit of the lands described distant seven chains and seventy-five links more or less from the southwesterly corner thereof, which land have been approved by the Lieutenant-Governor, and marked upon the map of the Park and submitted to the Lieutenant-Governor and approved in Council and copies whereof duly certified and authenticated are filed and deposited in the office of the Minister of Lands, Forests and Mines, and in the office of the Registrar for the County of Lincoln;

Vested in
Q. V. N. F. P.
Commission.

are set apart as a public park to be known as "The Queenston Heights Park," and the said land and the control and management thereof is vested in the Commissioners for the Queen Victoria Niagara Falls Park as trustees for Ontario, subject to the provisions of this Act. 8 Edw. VII. c. 32, s. 2.

Power of
Commissioners
to hold
certain
other lands.

3. Subject to the consent of the Lieutenant-Governor in Council the Commissioners of the Queen Victoria Niagara Falls Park may acquire and hold for the purposes hereinbefore mentioned, any ordnance or Admiralty land of Canada adjacent to the Niagara River or within three miles thereof which the Governor-General in Council may vest in them, by lease or otherwise, and the Commissioners shall thereby acquire the same right as any other lessee or licensee under like tenure to protect the said land against waste, spoil or destruction to, of or upon the said lands. 8 Edw. VII. c. 32, s. 3.

Power to
acquire
certain
other lands.

4.—(1) The Commissioners, with the approval of the Lieutenant-Governor in Council, may from time to time acquire such lands adjacent to or in the vicinity of the land hereinbefore mentioned in which any historic or public interest is deemed to attach, and shall hold the same in trust for Ontario subject to any trust declared in the deed or other instrument under which such lands are acquired and subject to the provisions of this Act.

Application
of Rev. Stat.
c. 50.

(2) Sections 9, 10, 13, 14, 15, 17 and 27 of *The Queen Victoria Niagara Falls Park Act* shall extend and apply to the Queenston Heights Park. 8 Edw. VII. c. 32, s. 4, *part*.

Park to be
open to public.

5. The Park shall be open to the public subject to any rules and regulations as to management made by the Commissioners and approved of by the Lieutenant-Governor in Council. 8 Edw. VII. c. 32, s. 5.

Nuisances.

6. The Commissioners shall not carry on or allow to be carried on in the Park or upon any of the lands so acquired

by them, any noisome or offensive trade or business whatever.
8 Edw. VII. c. 32, s. 6.

7. An offence against any by-law made by the Commission-^{Punishment}
ers of the Queen Victoria Niagara Falls Park shall be punish-^{of offences.}
able upon summary conviction, and *The Ontario Summary*^{Rev. Stat.}
Convictions Act shall apply thereto in the same manner as^{c. 90.}
to an offence against any Act of Ontario punishable under
the said Act. 8 Edw. VII. c. 32, s. 7.

8. The jurisdiction of the police magistrate of the City of^{Jurisdiction of}
Niagara Falls in accordance with the provisions of *The*^{Police Magis-}
Niagara Falls Magistrate's Act shall apply over all offences^{trate of}
cognizable by this Act committed on the Queenston Heights^{Niagara Falls.}
Park or the land which the Commissioners may acquire and^{Rev. Stat.}
hold under this Act.^{c. 100.}

CHAPTER 52.

An Act respecting Provincial Parks.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Provincial Parks Act*. 3-4 Geo. V. c. 15, s. 1.

Interpretation.

2. In this Act the “Minister” shall mean the Minister of Lands, Forests and Mines or the Minister to whom the control and management of a Park is assigned. 3-4 Geo. V. c. 15, s. 2.

PART I.

Reservation of land the property of the Crown. Rev. Stat. c. c. 28, 32.

3. The Lieutenant-Governor in Council may withdraw from sale, settlement and occupancy under the provisions of *The Public Lands Act*, and *The Mining Act of Ontario*, any tract of land being the property of the Crown, and not suitable for settlement or agricultural purposes, and may reserve and set apart the same as a public park and forest reserve, fish and game preserve, health resort and pleasure ground for the benefit, advantage and enjoyment of the people of Ontario, and for the protection of the fish, birds, game and fur-bearing animals therein, subject to the provisions of this Act and of the Regulations made thereunder, and any such tract shall be known as a Provincial Park and called by a distinctive name. 3-4 Geo. V. c. 15, s. 3.

Powers of Lieutenant-Governor as to Park boundaries.

4. The Lieutenant-Governor in Council may add to the Park any adjacent tract of land the property of the Crown, alter the boundaries of the Park, or withdraw any tract of land therefrom, and after publication of the Order in Council in the *Ontario Gazette* any such change shall take effect. 3-4 Geo. V. c. 15, s. 4.

Conditions where land previously granted is included.

5. Where any land which has been located, sold, leased or granted is subsequently included in a Provincial Park, or where any of the land so included is covered by a license or permit to cut timber, the Lieutenant-Governor in Council may impose such terms and conditions with respect thereto as he shall deem proper, but so as not to curtail or diminish any of the rights of the locatee, purchaser, lessee or owner of such land or the holder of the timber license or permit, except with his consent. 3-4 Geo. V. c. 15, s. 5.

6. Except as hereinafter provided no person shall locate, settle upon, use or occupy any part of a Provincial Park. Occupation forbidden.
3-4 Geo. V. c. 15, s. 6.

7. Every Provincial Park shall be under the control and management of the Minister, and the Lieutenant-Governor in Council may make Regulations for Control of park.
Regulations.

- (a) the care, preservation, management and improvement of the Park, and of the watercourses, lakes, trees, shrubbery, minerals, natural curiosities and other matters therein; Care and preservation.
- (b) controlling and regulating the level of the water in the rivers, streams and lakes of the Park with the view of preventing damage to the trees and vegetation on the shores thereof; Controlling, regulating level of water in rivers, etc.
- (c) leasing for any term of years such parcels of land in the Park as he deems advisable for the construction of buildings for ordinary habitation, and such other buildings as may be necessary for the accommodation of visitors or persons resorting to the Park as a sanitarium or health or summer resort; Leasing lots for erection of buildings.
- (d) issuing licenses or permits to cut timber within the limits of the Park and for the improvement of it and for fire wood for the use of persons engaged in and about the Park, and prescribing the conditions and requirements of such licenses or permits; Issuing timber licenses.
- (e) the working of mines and the developing of mineral interests within the limits of the Park, and the issuing of licenses or permits of occupation for those purposes; but no lease, license or permit shall be made, granted or issued under this or either of the next preceding two clauses which will in any way impair the usefulness of the Park for the purposes for which it is designed; Mining.
- (f) issuing licenses for shops and for houses for the accommodation of visitors and places where trade and industries necessary for the accommodation of persons resorting to the Park may be carried on; Licensing shops and inns.
- (g) the prevention and extinguishment of fires; Fires.
- (h) the preservation and protection of game, fish, wild birds and animals in the Park, and for the destruction of wolves, bears and other noxious or injurious or destructive animals; Preservation of game and fish.
- (i) the removal and exclusion of pedlars, travelling salesmen and trespassers, and the confiscation or de- Trespassers.

struction of guns or other firearms or explosives, traps, nets, spears or other weapons or implements for hunting or fishing found within the limits of the Park without proper authority;

Appoint-
ment of
officers.

(j) the appointment of a Superintendent and Wardens, Rangers, or other officers to see to the carrying out of the provisions of this Act and the Regulations, and prescribing their powers and duties, and providing for their salaries or other remuneration out of any money which may be appropriated for that purpose by this Legislature;

Penalties.

(k) the imposition of penalties for any violation of the provisions of this Act or of the Regulations not exceeding in any case \$50; and

General
purposes.

(l) generally for all purposes which he may deem necessary for carrying out the provisions of this Act. 3-4 Geo. V. c. 15, s. 7.

Publication
of regula-
tions.

8.—(1) Every such Regulation after its publication for four consecutive weeks in the *Ontario Gazette* and in any other manner prescribed by the Lieutenant-Governor in Council shall have the like force and effect as if herein enacted.

Laying
before
Assembly.

(2) Every such Regulation shall be laid before the Assembly forthwith if the Assembly is then in session, or if it is not then in session within fifteen days after the opening of the next session. 3-4 Geo. V. c. 15, s. 8.

Penalty for
unauthorized
use of fire-
arms, hunt-
ing, etc.

9. Carrying or using firearms or explosives within the Park, except as permitted by the Regulations, hunting with or without firearms or explosives, and trapping or spearing within the limits of the Park, except under special license to be issued by the Minister for the killing of wolves, bears, wolverines, wild cats, foxes or hawks are prohibited under a penalty not exceeding \$100 for each offence. 3-4 Geo. V. c. 15, s. 9.

When killing
of game, etc.,
may be per-
mitted.

10.—(1) Upon the report of the Minister that any species of fur-bearing or game animal or bird has increased to such an extent that its numbers may be lessened without detriment to the Park, or the purposes for which the Park was established, the Lieutenant-Governor in Council may authorize the taking or killing of such animals or birds, not exceeding the number specified in the Order in Council, under the direction and supervision of the Superintendent of the Park.

Marking of
skins.

(2) The skins or furs of the animals so taken or killed shall be marked by the Superintendent with the name of the Park, and also by punching or perforating the same in such manner as may be prescribed by the Lieutenant-Governor in Council, and such skins or furs, or the animals or birds so

taken, or their carcasses, may be sold by the Minister and the proceeds of the sale shall be applied towards defraying the expenses of the Park, and the possession or sale of skins or furs so taken and marked, or of such animals or birds or their carcasses, shall be lawful notwithstanding anything contained in any other Act or Regulation.

(3) Every person who without lawful authority marks the skin or fur of any such animal in the manner described in subsection 2, or who has in his possession or sells any such skin or fur knowing that the same has been so marked, in addition to any other penalty to which he may be liable, shall incur a penalty not exceeding \$200.

Penalty for unlawfully marking skin or fur.

(4) Every person who without lawful authority has in his possession any stamp, punch or other instrument or thing by means of which any such skin or fur may be marked in the manner described in subsection 2, in addition to any other penalty to which he may be liable, shall incur a penalty of \$200. 3-4 Geo. V. c. 15, s. 10.

Penalty for unlawfully having possession of stamp or brand.

11.—(1) Fishing with net, trap, spear or night line in the waters within the Park is prohibited under a penalty not exceeding \$100 for each offence.

Penalty for unauthorized fishing.

(2) No person shall fish within such waters except with hook and line and after having obtained a license so to do, and then only for the purpose of supplying food for visitors or officers of the Park or rangers or labourers therein employed by or under the control of the Superintendent, and no fish caught within the waters of the Park shall be sold, bartered or trafficked in under a penalty in either case not exceeding \$50 for each offence.

License to fish.

(3) Such licenses may be issued by the Minister or by such other person as shall be authorized by the Lieutenant-Governor. 3-4 Geo. V. c. 15, s. 11.

Issue of licenses.

12. Any Park Ranger or member of the Ontario Provincial Police Force, or other person appointed by the Minister for the purpose, may, on view without warrant or legal process, arrest and bring before a Justice of the Peace or before the Superintendent to be dealt with according to law, and the Superintendent shall have the like power of arresting such person and when he is arrested may summarily try him for any of the offences hereinafter mentioned, and a Park Ranger or the Superintendent may on view arrest and remove from the Park any person found violating the provisions of this Act, or carrying or having in his possession a fishing net, trap, spear or night line, or firearm or other explosive, or other weapon or instrument for catching or killing fish other than hook and line or for the destruction of game or animals. 3-4 Geo. V. c. 15, s. 12.

Power to arrest on view of offence.

Seizure,
confiscation
and sale of
weapons or
instruments.

13.—(1) In any of the cases mentioned in the next preceding four sections any of such officers may seize, take possession of and retain or confiscate any such net, trap, spear, firearm, explosive, weapon or instrument, or any Justice of the Peace may direct the seizure, confiscation or sale thereof.

Sale and
disposition of
proceeds.

(2) The articles shall be sold in the manner provided by the Regulations, and the proceeds, after deducting the necessary expenses, shall be applied towards the maintenance of the Park.

Offender's
liability to
penalty.

(3) An arrest, removal, seizure, confiscation or sale shall not relieve the offender from any other penalty to which he is liable under this Act or otherwise. 3-4 Geo. V. c. 15, s. 13.

Confiscating
weapons
unlawfully
used, etc.

14.—(1) The Superintendent or any Park Ranger or any member of the Ontario Provincial Police Force may seize, take possession of and confiscate or destroy any such net, trap, spear, explosive, weapon or instrument which he may find within the Park, whether the same is held or set out with intent to take or kill any animals or fish the taking or killing of which is forbidden by this Act, or otherwise, and may also seize and take possession of all firearms, furs, skins or peltries found within the Park, and the burden of proving that such furs, skins or peltries have not been taken or obtained contrary to law shall rest upon the person claiming the same or in whose possession they may be found.

Superin-
tendent to
report to
Minister.

(2) The Superintendent shall forthwith report any such seizure to the Minister who may direct the confiscation of the articles seized or any of them and may direct that they be sold and the proceeds applied as is provided in section 13.

Powers of
Superin-
tendent.

(3) For the purpose of searching for nets, traps, spears, firearms, explosives, weapons, instruments, furs, skins or peltries the Superintendent, any Ranger or any such Police Officer may enter into any house, dwelling, structure or camp within the Park and may there search for the same without a search warrant, and shall have the same powers of seizure and confiscation as elsewhere within the Park. 3-4 Geo. V. c. 15, s. 14.

Prohibition
against
cutting
timber.

Rev. Stat. c. 29.

15.—(1) No timber or wood shall be cut within the limits of any Park except under the authority of a timber license or permit issued under *The Crown Timber Act* or the Regulations made thereunder, or under the Regulations made under the authority of this Act, nor shall anything herein prevent the operation of any Act or Regulation made in respect of any timber license affecting the Park or the timber therein, but nothing herein shall have the effect of withdrawing the timber or wood of the classes mentioned therein from any timber license.

Rights of
timber
licensees.

(2) A timber license over or in respect of any land within the Park shall not entitle the holder thereof to exclusive possession of such land as against the Crown or its agents or

servants, nor shall any such license exempt the holder thereof, his agents or employees, from the prohibitions relating to fishing or hunting or the carrying or using of firearms within the limits of the Park. 3-4 Geo. V. c. 15, s. 15.

16. Mining exploration or prospecting for minerals within the Park is prohibited except under and in accordance with the Regulations. 3-4 Geo. V. c. 15, s. 16. Mining exploration.

17. No license shall be issued for the sale of intoxicating liquor within the Park, and any intoxicating liquor found within the limits of the Park and held for the purpose of sale may be seized and destroyed by any Park Ranger or by any Constable or License Inspector and every Ranger shall have all the powers and authority of a License Inspector for the purpose of enforcing therein the provisions of *The Liquor License Act* and of this Act. 3-4 Geo. V. c. 15, s. 17. Sale of intoxicating liquor within the Park.
Rev. Stat. c. 215.

18. Where no penalty is herein or otherwise provided any person violating any provision of this Act shall incur a penalty not exceeding \$50. 3-4 Geo. V. c. 15, s. 18. Where no special penalty provided.

19. In addition to any penalty provided by this Act for the violation of any of its provisions the offender shall be liable for all damages caused by him. 3-4 Geo. V. c. 15, s. 19. Offenders' liability for damages.

20. A Superintendent and Park Ranger shall have all the power and authority of a member of the Ontario Provincial Police Force. 3-4 Geo. V. c. 15, s. 20. Powers of Park Ranger.

21. The Superintendent shall, within the limits of the Park and for one mile from any part thereof, for the purposes of enforcing law and order and the provisions of this Act and the Regulations, have all the powers, rights and privileges of a Police Magistrate, and shall have jurisdiction over and within the Park and the territory surrounding the same for the distance of one mile from any part thereof unless and until otherwise provided by the Lieutenant-Governor in Council, or the Lieutenant-Governor in Council may appoint another person as Police Magistrate with such jurisdiction; but nothing in this section shall interfere with the jurisdiction of other Magistrates. 3-4 Geo. V. c. 15, s. 21. Superintendent to have authority of police magistrates.

22. During the construction and after the completion of any railway passing through a Park the Minister may appoint as many rangers, officers or guardians as he may see fit for the protection of the fish, animals and birds, and of any other property or interest of the Crown, and the expenses incident to and connected with such service, including the salaries of such rangers, officers or guardians, shall be a debt due to the Crown from the railway company, recoverable in any Court of competent jurisdiction. 3-4 Geo. V. c. 15, s. 22. Liability of railway company for expenses of conservation.

Superintendent to be *ex officio* a health officer.

Rev. Stat. c. 218.

23. The Superintendent shall be *ex officio* a medical officer of health for the Park and for the territory surrounding the same for the distance of one mile therefrom or from any part thereof, and shall have all the powers and perform all the duties by *The Public Health Act*, or any other Act conferred or imposed upon medical officers of health or local boards of health; and all Park Rangers, whether employed temporarily or otherwise, shall be *ex officio* sanitary inspectors under that Act and shall have all the powers and perform all the duties conferred or imposed upon sanitary inspectors thereunder. 3-4 Geo. V. c. 15, s. 23.

Operation of Game and Fisheries Act.
Rev. Stat. c. 262.

24. Nothing herein shall withdraw the territory comprising the Park or that within a mile from any part thereof from the operation of *The Ontario Game and Fisheries Act*, except as therein or herein otherwise provided. 3-4 Geo. V. c. 15, s. 24.

Licenses to guides.

25.—(1) The Superintendent may issue licenses to fit and proper persons to act as guides in conducting tourists and visitors into and through the Park, and any unlicensed person who acts as guide to any tourist or visitor shall incur a penalty not exceeding \$20 for each offence.

Annual fee.

(2) The annual fee to be paid for a license shall not exceed one dollar.

Cancellation of license.

(3) The Superintendent may cancel any such license upon proof of a contravention of this Act or of the Regulations by the licensee. 3-4 Geo. V. c. 15, s. 25.

Committal of offenders.

26. Any person arrested for a contravention of any of the provisions of this Act or of the Regulations who is punishable upon summary conviction may before or after conviction be committed to the common gaol or to any lock-up within a District in which the Park or any part thereof is situate, or to any nearer gaol or lock-up which may to the committing Justice appear more convenient. 3-4 Geo. V. c. 15, s. 26.

Recovery of penalties.
Rev. Stat. c. 90.

27. Except where otherwise provided by this Act the provisions of *The Ontario Summary Convictions Act* shall apply to prosecutions and proceedings for the recovery of penalties under this Act. 3-4 Geo. V. c. 15, s. 27.

PART II.

Algonquin Provincial Park.

28. The Algonquin National Park is hereby continued under the name of the Algonquin Provincial Park, and, except as hereinafter expressly provided, shall be subject to the provisions of this Act. 3-4 Geo. V. c. 15, s. 28.

Boundaries of park.

29. The tract of land comprising the following townships, being the lands of the Crown, and lying within the Terri-

torial District of Nipissing, that is to say, the Townships of Peck, Hunter, Devine, Biggar, Wilkes, Canisbay, McLaughlin, Bishop, Osler, Pentland, Sproule, Bower, Freswick, Lister, Preston, Dickson, Anglin, Deacon, all that portion of the Township of Finlayson east of the side road between lots 20 and 21 in the several concessions thereof; all that portion of the Township of McCraney east of the side road between lots 15 and 16 in the several concessions thereof; all that portion of the Township of Butt, east of the side road between lots 15 and 16 in the several concessions thereof; all that portion of the Township of Paxton, east of the side road between lots 15 and 16 in the several concessions thereof; all that portion of the Township of Ballantyne east of the side road between lots 20 and 21 in the several concessions thereof, except lot 21 in the 5th concession; all that portion of the Township of Boyd, south of the line between concessions 10 and 11, the west half of the Township of Fitzgerald comprising lots 1 to 20 in concessions 1 to 14 inclusive; lots 1 to 20 in concessions 1 to 14 inclusive in the Township of White; lots 16 to 38 in concessions 1 to 14 inclusive in the Township of Niven, and lots 16 to 37 in concessions 4 to 15 inclusive, the north 80 acres of lot 36 and the north 72 acres of lot 37 in the 2nd concession, and lots 35, 36 and 37 in the 3rd concession in the Township of Clancy, is hereby withdrawn from sale, settlement and occupancy under the provisions of *The Public Lands Act*, and *The Mining Act of Ontario*, and is set apart as a Public Park, Forest Reservation and Health Resort for the benefit and enjoyment of the people of Ontario and shall be known as "The Algonquin Provincial Park." 3-4 Geo. V. c. 15, s. 29.

Rev. Stat.
c c. 28, 32.

30.—(1) No timber or wood shall be cut within the limits of the Park except pine, spruce, hemlock, black and yellow birch, cedar, black ash and tamarack cut under the authority of a timber license issued under the provisions of *The Crown Timber Act*, or the Regulations made thereunder, or by the authority of the Minister, or under the Regulations made by the Lieutenant-Governor in Council for the government and maintenance of the Park, provided nevertheless that nothing herein shall have the effect of withdrawing the timber or wood of the classes above specified from any timber license, nor shall anything herein prevent the operation of any Act or Regulation made in respect of any timber license affecting the Park or the timber therein.

Cutting
timber.

Rev. Stat. c. 29

(2) All interest or claim of the holder or owner of a timber license heretofore or hereafter issued or renewed in or to any kind of timber in the Park, except pine timber, shall on and after the expiry of thirty years from the 30th day of April, 1900, forever cease and determine, and all the timber, except pine, shall become the property of His Majesty freed and discharged of and from any interest, charge or claim of the holder or owner of such timber license or any person claiming through or under him or any other person.

Interests
under
licenses
for timber
other than
pine and
renewals
to cease
after 30th
April, 1930.

Extent of
license.

(3) Nothing in this section shall authorize the cutting of any timber except pine by the holder or owner of a timber license in the Park issued for a timber berth at the sale of which by the Crown the right to cut pine timber only was sold.

Rights of
timber
licensees.

(4) A timber license over or in respect of any land within the Park shall not entitle the holder thereof to exclusive possession of such land as against the Crown or its agents or servants, nor shall any such license exempt the holder thereof, his agents or employees from the prohibitions relating to fishing or hunting or the carrying or using of firearms within the limits of the Park. 3-4 Geo. V. c. 15, s. 30.

Rondeau
Provincial
Park,
continued.

31. The Rondeau Provincial Park is also hereby continued, and except as hereinafter expressly provided shall be subject to the provisions of this Act. 3-4 Geo. V. c. 15, s. 31.

Boundaries
of park.

32. The tract of land, marsh and land covered with water hereinafter mentioned, that is to say, so much of the Rondeau Peninsula otherwise known as Pointe aux Pins, in the County of Kent, as is the property of the Province and which may be known and described as follows, namely, all that parcel of land, marsh and land covered with water bounded on the north by the north limit of lot number 1 on said Pointe aux Pins and said limit produced easterly to the water's edge of Lake Erie, as shown on plan of survey by Provincial Land Surveyor Henry Lawe, dated September 8th, 1864, of record in the Department of Lands, Forests and Mines; on the east and south by the waters of said Lake Erie and on the west by the waters of the Harbour of Rondeau and the easterly breakwater pier at the entrance to said Harbour; excepting thereout nevertheless said lot number 1 on Pointe aux Pins containing 58½ acres, as granted by Letters Patent to Isaac Swartout in 1872, and also that part of the Sand Beach containing 15½ acres, dividing the Harbour of Rondeau from Lake Erie as vested in the Government of Canada for light-house purposes on June 21st, 1892, containing by admeasurement an area of land, marsh and land covered with water of 4,946 acres, more or less, is hereby reserved and set apart as a Public Park, Forest Reservation and Health Resort for the benefit, advantage and enjoyment of the people of Ontario, and shall be known as "The Rondeau Provincial Park." 3-4 Geo. V. c. 15, s. 32.

Dedication
of land
for park
purposes.

Cutting
timber.

33. No timber or wood shall be cut within the limits of the Park, except dead or fallen wood, or in clearing for roads or other Park purposes, or underbrushing in clearing and maintaining the Park as shall be provided for by Regulation, and then only under the direction of the Ranger. 3-4 Geo. V. c. 15, s. 33.

34.—(1) No person shall at any time shoot, hunt, take or kill any partridge, prairie fowl, quail, woodcock, snipe, wild turkey, or other bird or fowl within the Park; nor shall anyone shoot, hunt, trap, take or kill any wild animal or bird in the Park, except foxes, skunks, weasels, owls, hawks or other noxious animals or birds, and as to such excepted animals and birds only after obtaining the authority in writing of the Ranger; but this shall not prevent or apply to shooting or taking wild duck or geese in the waters around and along the coasts of the Park during the lawful season and in accordance with the Regulations hereinafter authorized.

Hunting
of game
prohibited.

Exception as
to water
fowl.

(2) The Lieutenant-Governor in Council may make Regulations as to the shooting, hunting, taking or killing within two miles of the Park or within Rondeau Harbour of any bird or fowl protected by the provisions of this Act.

Regulation
of the
killing of
birds near
the park.

(3) Any person offending against the provisions of this section or violating the provisions of such Regulations shall for each offence incur a penalty of not less than \$20 and not more than \$50. 3-4 Geo. V. c. 15, s. 34.

Penalty.

35. Section 17 shall apply to the Park, except that no license shall be issued for the sale of intoxicating liquor within one mile of the Park as well as within it. 3-4 Geo. V. c. 15, s. 35.

How far
section 17 to
apply.

CHAPTER 53.

An Act respecting Burlington Beach.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Burlington Beach Act*.
7 Edw. VII. c. 22, s. 1.

Commission continued. **2.**—(1) There shall continue to be a Board of Commissioners, composed of not less than two persons appointed by the Lieutenant-Governor in Council, which shall be a body corporate by the name of "The Burlington Beach Commission," hereinafter called the Commission.

Tenure of office. (2) The Commissioners shall hold office during pleasure.

Chairman and secretary. (3) The Commissioners shall at the first meeting of the Commission in each year elect one of their number as Chairman and shall appoint a Secretary, who for the purposes of this Act shall possess all the rights and powers and perform all the duties that pertain respectively to the offices of clerk and treasurer of a village. (*See* 7 Edw. VII. c. 22, s. 2.)

Beach vested in commission. **3.** All those parcels or tracts of land and premises known as portions of Burlington Beach in the township of Saltfleet, as shown and coloured red on parts of a plan of survey by Thomas C. Brownjohn, P.L.S., dated Hamilton, September 25th, 1874, of record in the Department of Lands, Forests and Mines, which are abutted and bounded as follows:—

First. Commencing at the point A as shown on the plan in the southern limit of the County of Halton; thence easterly along that limit to the easterly shore of the Beach at the point B as shown on the plan; thence southerly along the said Beach to the point C as shown on the plan at the intersection of the northerly limit of the Burlington Canal Reserve; thence westerly along the northerly limit of the Reserve to the westerly shore of the Beach at the point D as shown on the plan; thence northerly along the Beach to the point A as shown on the plan, the place of beginning;

Second. Commencing at the point E on the plan in the southern limit of the Burlington Canal Reserve; thence easterly along that limit to the easterly shore of the Beach at the point F as shown on the plan; thence southerly along

the Beach to the point G as shown on the plan, being the point of intersection with the north side of the road between lots Nos. 28 and 29 in the 1st concession of the Township of Saltfleet, produced easterly to the Beach; thence westerly along the northerly side of that road produced to the westerly shore of the Beach at the point H as shown on the plan; thence northerly along the said beach to the point E as shown on the plan, the place of beginning;

Third. The Burlington Canal Reserve;

Fourth. The promontory extending into Burlington Bay from the Beach, which is not colored red on the plan, and which promontory extends from a point a little north of the northerly boundary of the lands granted to Frank E. Walker by letters patent dated 18th May, 1896, southerly to a point opposite the lands granted to James Crooks by letters patent dated 7th April, 1897;

Fifth. Land under the waters of Burlington Bay and Lake Ontario adjoining the Beach which may be required for water lots and kindred purposes, in which the fee is vested in the Crown;

And hereinafter referred to as Burlington Beach shall continue to be vested in the Commission in trust for the Crown, and the Commission shall have jurisdiction over the whole thereof for the purposes of all powers granted to it under this Act. 7 Edw. VII. c. 22, s. 3.

4. It shall be the duty of the Commission and it shall have power to enquire into and ascertain the facts concerning all franchise agreements, all sub-leases, all portions of Burlington Beach held under sub-leases from the Corporation of the City of Hamilton or otherwise, the names of the persons holding the same, the amounts of rents reserved, or other payments provided for in the same, the terms and conditions under which such agreements and sub-leases are made, and all other particulars in connection with the same. 7 Edw. VII. c. 22, s. 4.

Board to enquire as to present franchises and sub-leases.

5. The Commission shall have power to demand, collect and receive from any person in occupation or use of the lands in Burlington Beach under any such agreement or sub-lease any money due and unpaid for rent or otherwise in respect thereof. See 7 Edw. VII. c. 22, s. 5.

Collection of arrears of rent.

6. The Commission shall, after making such enquiries, report to the Lieutenant-Governor in Council all facts in connection therewith, and shall make such recommendation to the Lieutenant-Governor in Council as to the terms and conditions upon which any land should be leased, sold or otherwise disposed of and any rights, privileges or franchises should be granted to the occupants or to other persons as to the Com-

Report upon sub-leases.

mission may seem just and proper under the circumstances of each case. 7 Edw. VII. c. 22, s. 6.

Regulations,
leases, etc.

7. The Commission subject to such regulations as may be approved by the Lieutenant-Governor in Council may make such dispositions by agreement, lease, sale or otherwise as may be approved by the Lieutenant-Governor in Council. 7 Edw. VII. c. 22, s. 7.

Duties as to
receipts and
expenditure.

8. The Commission shall collect all rents, taxes or other money accruing due in respect of land in Burlington Beach, and may expend so much of the money received therefrom as may in its opinion be necessary or expedient in beautifying or otherwise improving the same as a park and place of public resort, and for all purposes authorized by this Act, and shall annually remit on or before the 1st day of December in each year to the Treasurer of Ontario any surplus remaining in its hands. 7 Edw. VII. c. 22, s. 8.

Constables.

9. The Commission may appoint one or more constables who shall have the same powers and perform the same duties in Burlington Beach as a constable appointed by the council of a village. 7 Edw. VII. c. 22, s. 9.

By-laws for
regulation.

10.—(1) The Commission shall have all the powers conferred by *The Municipal Act* on the board of commissioners of police in a city having a population of not less than 100,000.

License fees.

(2) The Commission may make regulations and pass by-laws for fixing the sums to be paid for licenses required under the by-laws passed under subsection 1.

Effect of
by-laws
passed by
commissioners.

(3) After the passing of any such by-law no general by-law of the township for any of the purposes provided for by such by-law shall apply.

Fire
protection.

(4) The Commission may also make regulations and pass by-laws for protection from fire and for providing such fire appliances as it may deem necessary for the protection of life and property within the limits of Burlington Beach.

Sidewalks,
drains, park
improvements,
etc.

(5) The Commission may also make regulations and pass by-laws for letting contracts or employing labour and purchasing material for building sidewalks and culverts, putting in drains and improving and beautifying Burlington Beach as a park and place of public resort and doing all things necessary for such purposes, and the Commission may pass by-laws for entering into and may enter into contracts for the supply of water, light or heat by any person or company to Burlington Beach or the residents therein and doing all things necessary for such purposes within the limits of Burlington Beach.

Generally.

(6) The Commission may also make such regulations and pass such by-laws for the proper government of Burlington Beach as may be approved by the Lieutenant-Governor in Council. 7 Edw. VII. c. 22, s. 10.

11.—(1) The Commission may raise by loan a sum not exceeding \$20,000 for the purpose of constructing, building, purchasing, improving, extending, holding, maintaining, managing and conducting water works and all buildings, materials, machinery and appurtenances thereto belonging, and other permanent works for a proposed water works system of the Commission and a sum not to exceed \$20,000 for enlarging and improving the Park on Burlington Beach. 8 Edw. VII. c. 31, s. 2.

Commission authorized to borrow \$20,000 for materials, etc.

(2) The Commission may pass by-laws for contracting debts for any of such purposes by borrowing money and for issuing debentures therefor, and it shall not be necessary to levy any special rate therefor.

By-laws for contracting debts.

(3) The whole debt and the debentures to be issued therefor shall be made payable in thirty years at furthest from the time or times when the debentures are issued.

Term of debt.

(4) The amount falling due for principal and interest in each year on account of such debentures shall be payable out of the general revenues of the Commission. 8 Edw. VII. c. 31, s. 3.

How payable.

(5) The holder of every debenture or other obligation issued under the authority of this Act shall have a preferential charge or lien on the revenues of the Commission, and the Commission shall pay such debenture debts in priority to all other debts. 8 Edw. VII. c. 31, s. 4.

Lenders to have preferential lien on revenue of Commission.

12. The provisions of *The Public Utilities Act* except where inconsistent with the provisions of this Act shall apply to the Commission. 8 Edw. VII. c. 31, s. 5.

Application of Rev. Stat. c. 204.

13. By-laws passed by the Commission shall be authenticated by the signatures of the chairman and secretary and the seal of the corporation; and a copy of any such by-law so authenticated shall be of the same force and shall have the same effect as a copy of a municipal by-law duly certified in the manner provided by *The Municipal Act*. 7 Edw. VII. c. 22, s. 11.

Authentication of by-laws.

Rev. Stat. c. 192.

14.—(1) The Commission may in any by-law provide that any one contravening such by-law shall incur a penalty not exceeding \$50 or be liable to imprisonment for a term not exceeding sixty days, and such penalty may be enforced by any justice of the peace having jurisdiction within the County of Wentworth. 7 Edw. VII. c. 22, s. 12.

Penalty for infraction of by-laws.

(2) *The Ontario Summary Convictions Act* shall apply to every prosecution under any such by-law. *New*.

Application of Rev. Stat. c. 90.

15. All sums collected for license fees or for penalties for offences against any by-law passed by the Commission shall be paid over to the Commission. 7 Edw. VII. c. 22, s. 13.

Application of license fees and penalties.

Repair of
highways.

16. It shall be the duty of the Commission to keep the highways in Burlington Beach in proper repair. 7 Edw. VII. c. 22, s. 14.

Commissioners
to have rights
of township
as to agree-
ments with
railway
companies.

17. In case a railway operated by electricity upon a highway or any portion of which is so operated has been heretofore constructed in Burlington Beach under any agreement with the corporation of the Township of Saltfleet, then so far as such agreement relates to the maintenance and repair of the tracks and roadbed of the railway or the remaining portions of the highways in Burlington Beach over which the railway is operated and to the removal of snow and ice from the tracks of the railway and the disposal of such snow and ice upon the highway or elsewhere, the Commission shall, in respect of that portion of the railway in Burlington Beach, be substituted for and have all the rights and may exercise all the powers and be subject to the same duties as the corporation of the Township of Saltfleet under such agreement and any officer or person named therein and charged with the performance of any duty in respect to such matters thereunder. 7 Edw. VII. c. 22, s. 15.

Railway
tracks to con-
form to
grades.

18. All railway companies occupying highways in Burlington Beach shall cause their tracks to conform to the grades of the highways and shall maintain the same in such manner as shall least obstruct the free and ordinary use of the highways and the passage of vehicles over the same; and the upper surface of the rails shall be laid flush with the surface of the highways and shall conform to the grade thereof. 7 Edw. VII. c. 22, s. 16.

Assessment
and taxation.

Rev. Stat.
c. 195.

Rev. Stat. c. 6.

19.—(1) The Commission may provide for the assessment of all land situate within Burlington Beach, and shall as to it perform and possess all the duties and powers provided for by *The Assessment Act* and *The Ontario Voters' Lists Act* in the case of clerks, assessors and collectors in townships and for the collection of all money due from the owners or occupants of such land, and may expend such money for the purposes hereinbefore set forth, and for such other purposes as may from time to time be approved by the Lieutenant-Governor in Council.

Limit of rate.

(2) No assessment involving the payment of a greater rate on the dollar than that on the 20th day of April, 1907, imposed upon the ratepayers in Burlington Beach shall be made, and no greater tax collected except with the approval of the Lieutenant-Governor in Council. 7 Edw. VII. c. 22, s. 17.

Officers and
workmen.

20. The Commission shall have power to employ such officers and workmen as may be deemed necessary for the purposes of this Act. 7 Edw. VII. c. 22, s. 18.

Books of
account.

21.—(1) The Commission shall cause books to be provided and true and accurate accounts to be entered therein

of all sums of money received and paid out and of the several purposes for which the same were received and paid out; and such books shall be at all times open to the inspection of the Treasurer of Ontario and of any person appointed by him, or by the Lieutenant-Governor in Council, or by a majority of the ratepayers in Burlington Beach for such purposes, and any such person may take copies or extracts from such books.

(2) Sections 26 and 27 of *The Audit Act* shall apply to the accounts of the Commissioners in respect of receipts and expenditures. Rev. Stat. c. 23, ss. 24-27, to apply.

(3) A summary of the receipts and expenditures shall be published annually in a newspaper published in the City of Hamilton. 7 Edw. VII. c. 22, s. 19. Publication of summary of receipts and disbursements.

22. The Commission shall on or before the 1st day of December in each year report to the Lieutenant-Governor in Council the receipts and expenditures of the year and such other matters as may appear to it to be of public interest in relation to the government of Burlington Beach, or to anything arising out of this Act, and shall in all cases supply to the Lieutenant-Governor in Council such information relating thereto as he may direct. 7 Edw. VII. c. 22, s. 20. Annual report to Crown.

23. No action shall be brought against the Commissioners personally for anything done or omitted to be done under this Act without the authority of the Lieutenant-Governor in Council. 10 Edw. VII. c. 26, s. 31 (2). Actions not to lie against Board without consent of Crown.

24.—(1) Burlington Beach shall be deemed to be separated from and shall not form part of the Township of Saltfleet or of the County of Wentworth for municipal or school purposes and shall cease to be subject to the jurisdiction thereof except for judicial purposes. Territory separated from township of Saltfleet and County of Wentworth.

(2) The Commission shall pay annually on or before the 31st day of December until the year 1925 inclusive, and no longer, the sum of \$200 only to the corporation of the Township of Saltfleet for school section number 4 debenture debt existing on the 13th day of April, 1909. Payments by Commissioners of Beach for certain purposes.

(3) The school house in school section number 4 shall be the exclusive property of the school section 4 as constituted after the separation of Burlington Beach therefrom. Schoolhouse in S.S. No. 4, Saltfleet.

(4) The residents of Burlington Beach shall not send any pupils to the school without the consent of the trustees of the section. Pupils not to be sent from Burlington Beach.

(5) The Commission shall also pay annually on or before the 31st day of December the sum of \$250 to the corporation of the County of Wentworth in full satisfaction of all liability to the county. 9 Edw. VII. c. 25, s. 1. Annual payment to county.

Action not to be maintainable against township or county.

25. No action shall be maintainable against the corporation of the County of Wentworth or the corporation of the Township of Saltfleet by reason of the non-repair of the highways, streets, sidewalks or bridges in Burlington Beach or by reason of any misfeasance or nonfeasance in relation to them. 9 Edw. VII. c. 25, s. 2, *part*.

Collection of arrears of taxes.

Rev. Stat. c. 195.

26. The corporation of the Township of Saltfleet may collect in the manner provided by *The Assessment Act* all arrears of taxes up to and inclusive of the year 1906 and still remaining unpaid, and for that purpose the Treasurer and Warden of the County of Wentworth shall have power respectively to take all the proceedings which treasurers and wardens under *The Assessment Act* can take for the sale and conveyance of lands in arrears for taxes in respect to lands in arrears for taxes in Burlington Beach of which a return had been made to the Treasurer of the County of Wentworth for arrears prior to the 31st day of December, 1906. 9 Edw. VII. c. 25, s. 2, *part*.

Application of Rev. Stat. c. 215.

27.—(1) The provisions of *The Liquor License Act* shall apply to and remain in force in Burlington Beach as if it remained a portion of the Township of Saltfleet for municipal purposes, but the proportion of the license fund of the license district which would be otherwise payable to the corporation of the township in respect of Burlington Beach shall belong to and be paid to the Commission; but no more than three licenses shall be granted in Burlington Beach.

Separation from Saltfleet for purposes of Rev. Stat. c. 215.

(2) For the purpose of taking a vote of the municipal electors on any by-law submitted to them under *The Liquor License Act* the Township of Saltfleet shall be deemed to be separate and distinct from Burlington Beach. 7 Edw. VII. c. 22, s. 23; 10 Edw. VII. c. 26, s. 31 (1).

Voting at elections to Assembly.

28. For purposes of elections to the Assembly Burlington Beach shall be and remain a portion of the Township of Saltfleet, and all persons in Burlington Beach possessing the necessary qualifications shall be entitled to be placed on the voters' lists of that township; and for such purposes the Commission shall annually before the 15th day of July prepare and furnish to the clerk of the township a list of persons so qualified, and, for the information of the clerk, shall furnish all particulars required in preparing his lists under *The Ontario Voters' Lists Act*. 7 Edw. VII. c. 22, s. 24; 8 Edw. VII. c. 31, s. 1.

Rev. Stat. c. 6.

Annexation to Wentworth for judicial purposes.

29. For all judicial purposes Burlington Beach shall be and remain a portion of the County of Wentworth. 7 Edw. VII. c. 22, s. 25.

SECTION VII.

ADMINISTRATION OF JUSTICE.

1. APPEALS TO THE PRIVY COUNCIL.

CHAPTER 54.

An Act respecting Appeals to His Majesty in His Privy Council.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Privy Council Appeals* Short title.
Act. 10 Edw. VII. c. 24, s. 1.

2. Where the matter in controversy in any case exceeds When appeal may be made. the sum or value of \$4,000, as well as in any case where the matter in question relates to the taking of any annual or other rent, customary or other duty, or fee, or any like demand of a general and public nature affecting future rights, of what value or amount soever the same may be, an appeal shall lie to His Majesty in His Privy Council; and, except as aforesaid, no appeal shall lie to His Majesty in His Privy Council. 10 Edw. VII. c. 24, s. 2.

3. No such appeal shall be allowed until the appellant Security. has given security in \$2,000, to the satisfaction of the Court appealed from, that he will effectually prosecute the appeal, and pay such costs and damages as may be awarded in case the judgment appealed from is confirmed. 10 Edw. VII. c. 24, s. 3.

4. Subject to Rules of Court, upon the perfecting of such Stay of execution. security, execution shall be stayed in the original cause except in the following cases:

(a) If the judgment appealed from directs the assign- Exceptions: Where assign- ment or delivery of documents or personal prop- ment or delivery of documents or personal property, execution shall not be stayed until the things directed to be assigned or delivered have been brought into Court or placed in the custody property directed.

Delivery into
custody, or
security.

of such officer or receiver as that Court or a Judge of it appoints, or until security has been given to the satisfaction of the Supreme Court or a Judge thereof, and in such sum as may be directed, that the appellant will obey the order of the Privy Council;

Where execu-
tion of
instrument
directed.

(b) If the judgment appealed from directs the execution of a conveyance or any other instrument, execution shall not be stayed until the instrument has been executed and deposited with the proper officer, to abide the judgment of the Privy Council;

Where sale
of real
property, etc.,
directed.

(c) If the judgment appealed from directs the sale or delivery of possession of real property or chattels real, execution shall not be stayed until security has been entered into to the satisfaction of the Supreme Court, or a Judge thereof, and in such sum as such Court or Judge directs, that during the possession of the property by the appellant he will not commit or suffer to be committed any waste on the property, and if the judgment is confirmed he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession of it, and also in case the judgment is for the sale of property and the payment of a deficiency arising upon the sale, that the appellant will pay the deficiency;

Security not
to commit
waste.

Where
payment
of money
directed.

(d) If the judgment appealed from directs the payment of money, execution shall not be stayed until the appellant has given security to the satisfaction of the Supreme Court or a Judge thereof that if the judgment or any part of it is affirmed the appellant will pay the amount thereby directed to be paid or the part of it as to which the judgment may be affirmed, if it is affirmed only as to part, and all damages awarded against the appellant on the appeal. 2 Geo. V. c. 18, s. 1, *part*.

Security to
pay debt.

Forms, etc.,
of security.
Rev. Stat.
c. 190.

5. Subject to the provisions of *The Guarantee Companies Securities Act*, the security shall be by the bond, Form 1, of two sufficient sureties, each of whom shall make affidavits of justification, Form 2. 2 Geo. V. c. 18, s. 1, *part*.

Amount of
security where
judgment
directs pay-
ment of
money.

6. Where security is to be given for payment of money, directed by the judgment or order appealed from to be paid, either as a debt or for damages or costs, the bond shall be in double the amount by the judgment or order directed to be paid; but where security is to be given in a sum in excess of \$2,000, the Supreme Court or a Judge thereof may allow it to be given by a larger number of sureties, apportioning

the amount among them as may be deemed proper; and where the amount directed to be paid exceeds \$10,000 may allow the security to be given for such amount less than double the amount directed to be paid as may be deemed proper. 2 Geo. V. c. 18, s. 1, *part*.

7. Where the judgment appealed from directs the sale or delivery of possession of real property or chattels real, the bond shall be in double the yearly value of the property. ^{Where judgment directs sale, etc.} 2 Geo. V. c. 18, s. 1, *part*.

8. The bond, with an affidavit of the due execution of it, and the affidavits of justification, shall be filed in the office in which the action or matter was commenced, and shall be deemed to be perfected and allowed, unless within fourteen days after being served with notice of the filing the respondent moves for its disallowance; but the appellant may, after the filing, make a special application before the expiration of such fourteen days to stay execution. ^{Filing of bond.} 2 Geo. V. c. 18, s. 1, *part*.

9. Instead of giving a bond the appellant may, without order, pay into Court a sum equal to half the penalty of the bond in cases within section 5 or section 7, or equal to the amount by the judgment or order directed to be paid in cases within section 6, and the money when so paid in shall stand as security in lieu of a bond, but either party may apply to the Court or a Judge to increase or diminish the amount to be paid into Court. ^{Payment into court in lieu of bond.} 2 Geo. V. c. 18, s. 1, *part*.

10. When the security has been perfected and allowed, a Judge of the Supreme Court may issue his fiat to the sheriff to whom any execution upon the judgment has been issued, to stay the execution, and the execution shall be thereby stayed, whether a levy has been made under it or not; but if the grounds of appeal appear to be frivolous, the Supreme Court or a Judge thereof may order execution to issue or to be proceeded with. ^{Fiat for stay. Unless appeal frivolous.} 2 Geo. V. c. 18, s. 1, *part*.

NOTE.—By 2 Geo. V. c. 18, s. 3 it is provided that that Act shall not apply to cases in which the security has been perfected under the provisions of the sections thereby repealed. The Act 2 Geo. V. c. 18 came into force by proclamation on the 3rd day of March, 1913.

11. A Judge of the Supreme Court shall have authority to approve of and allow the security to be given by a party who intends to appeal to His Majesty in His Privy Council, whether the application for such allowance be made during the sittings of the Court, or at any other time. ^{Approval of security.} 10 Edw. VII. c. 24, s. 6.

12. The preceding sections shall not apply to an appeal to His Majesty in His Privy Council from a judgment of any ^{Exception in Appeals under R.S.O. c. 85.} 43 s.

court on a reference under *The Constitutional Questions Act*. 10 Edw. VII. c. 24, s. 7.

Costs.

13. Costs awarded by His Majesty in His Privy Council upon an appeal shall be recoverable by the same process as costs awarded by the Supreme Court. 10 Edw. VII. c. 24, s. 8.

FORM 1.

Know all men by these presents that we (*naming all the obligors, with their places of residence and additions*), are jointly and severally held and firmly bound unto (*naming the obligees, with their places of residence and additions*), in the penal sum of _____ dollars, for which payment, well and truly to be made, we bind ourselves, and each of us and our and each of our heirs, executors and administrators, respectively, firmly, by these presents.

Dated this _____

day of _____

Whereas (*the appellant*) complains that, in the giving of a certain judgment in a certain suit in His Majesty's Supreme Court of Ontario, between (*naming the parties to the cause*), manifest error hath intervened, wherefore the appellant desires to appeal from such judgment to His Majesty in His Privy Council.

(*Where it is desired also to give security in order to stay execution, insert.* And whereas the appellant is desirous of having the execution of the judgment stayed pending the appeal.)

Now the condition of this obligation is such, that if the appellant do and shall effectually prosecute such appeal, and pay such costs and damages as shall be awarded in case the judgment to be appealed from shall be affirmed or in part affirmed, [*In order to stay execution where the judgment directs the sale or delivery of possession of property, add, and during the possession of the property in question in the action (or otherwise describing it) by the appellant he shall not commit, or suffer to be committed, any waste on the property, and that if the judgment be affirmed, or in part affirmed, he shall pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof*], [*Add, if ordered, in case the judgment is for the sale of the property and payment of any deficiency arising upon the sale, and that in case of any deficiency rising upon a sale as directed by the judgment he shall pay the amount of the deficiency, or the part of it as to which the judgment may be affirmed, if it be affirmed only as to part*], [*Add, if ordered where the judgment directs the payment of money, and shall pay the amount by said judgment directed to be paid, either as a debt or for damages or costs or the part of it as to which the judgment may be affirmed, if it is affirmed only as to part, and all damages and costs awarded against the appellant on such appeal*], [*Where the judgment directs the delivery of documents or personal property, add, and shall obey the order to be made by His Majesty in His Privy Council*] then this obligation shall be void, otherwise to remain in full force.

(*Where the security is given pursuant to any order, the bond will recite the order and the condition will be varied, if necessary, according to the terms of the order.*)

Signed, sealed and delivered, in the presence of _____

FORM 2.

AFFIDAVIT OF JUSTIFICATION.

Between

A. B. (Respondent),

Plaintiff;

v.

C. D. (Appellant),

Defendant.

I, E. F., of make oath and say as follows:

1. I am one of the sureties to the annexed bond.

2. I am a resident inhabitant of Ontario, residing at
and am a householder in (or a freeholder in).3. I am worth and own property to the amount of
(the sum mentioned as the penalty, or such sum as the deponent is
bound in) over and above what will pay all my debts (if surety in any
other matter, add, And every other sum for which I am liable or
for which I am bail or surety).4. I am not bail or surety for any plaintiff or defendant except in
this action (or if bail or surety in any other cause or matter, add, And
except for G.H., in an action in the Court in which X.Y. is plain-
tiff and G.H. is defendant) in the sum of \$
(or as the case may be, specifying the several causes or matters with
the Court in which each is, and the sums in which the deponent is bail
or surety).5. And I, J.H., of , make oath and say as follows: (in
similar terms as the case may require; or separate affidavits may be
made).The above named deponents, E.F.
and J.H., were sworn, etc., the
day of 19 , before
me.

Commissioner, etc.

2 Geo. V. c. 18, Form 2.

2. DOMINION COURTS OF CANADA.

CHAPTER 55.

An Act respecting the Supreme Court of Canada and the Exchequer Court of Canada.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Dominion Courts Act*. 10 Edw. VII. c. 25, s. 1.

Jurisdiction of Courts.

R. S. C. cc. 139, 140.

2. The Supreme Court of Canada, and the Exchequer Court of Canada, or the Supreme Court of Canada alone, according to the provisions of the Acts of the Parliament of Canada, known as *The Supreme Court Act* and *The Exchequer Court Act*, shall have jurisdiction in cases of:—

Controversies between Canada and Ontario.

(a) Controversies between the Dominion of Canada and Ontario;

Controversies between Ontario and certain other Provinces.

(b) Controversies between any other Province of the Dominion which may have passed an Act similar to this Act and Ontario;

Cases involving the validity of Acts of Canada or Ontario.

(c) Actions, or proceedings, in which the parties thereto by their pleadings have raised the question of the validity of an Act of the Parliament of Canada, or of an Act of the Legislature of Ontario, when in the opinion of a Judge of the Court in which the same are pending such question is material; and in such case the Judge shall, at the request of the parties, and may without such request, if he thinks fit, order the case to be removed to the Supreme Court of Canada, in order to the decision of such question. 10 Edw. VII. c. 25, s. 2.

When appeal lies.

3. In any action respecting property or civil rights, whether for damages or for specific relief, the judgment of the Appellate Division shall be final except

Title to real estate.

(a) Where the title to real estate or some interest therein is in question;

- (b) Where the validity of a patent is affected; Patent.
- (c) Where the matter in controversy in the appeal exceeds the sum or value of \$1,000, exclusive of costs; Sum over \$1,000.
- (d) Where the matter in question relates to the taking of an annual or other rent, customary or other duty or fee, or a like demand of a general or public nature affecting future rights; Annual rent, etc., etc.
- (e) Where the special leave of the Appellate Division or the Supreme Court of Canada to appeal to such last mentioned Court is granted. 10 Edw. VII. c. 25, s. 3. By leave.

4. In case sittings of any Court of the Dominion of Canada, or of any judge thereof, are appointed to be held in any city, town, or place in which a Court House is situate, such Court or Judge shall have, in all respects, the same authority as a Judge of the High Court Division in regard to the use of the Court House and other buildings or apartments set apart in the county for the administration of justice. 10 Edw. VII. c. 25, s. 4. Authority of Judges of Dominion Courts as to use of Court House, etc.

3. CONSTITUTION OF THE PROVINCIAL COURTS.

CHAPTER 56.

An Act respecting The Supreme Court of Ontario and the Administration of Justice in Ontario.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PRELIMINARY.

Short title.	1. This Act may be cited as <i>The Judicature Act.</i> 3-4 Geo. V. c. 19, s. 1.
Interpretation.	2. In this Act,—
"Action."	(a) "Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by the Rules;
"Appellate Division."	(b) "Appellate Division" shall mean Appellate Division of the Supreme Court;
"Cause."	(c) "Cause" shall include an action, suit or other original proceeding between a plaintiff and a defendant;
"County."	(d) "County" shall include district;
"County Court."	(e) "County court" shall include district court;
"County town."	(f) "County town" shall include district town;
"Court of Appeal."	(g) "Court of Appeal" shall mean Court of Appeal for Ontario;
"Defendant."	(h) "Defendant" shall include a person served with a writ of summons or process, or served with notice of or entitled to attend a proceeding;
"Divisional Court."	(i) "Divisional Court" shall mean Divisional Court of the Appellate Division;
"High Court."	(j) "High Court" shall mean High Court of Justice for Ontario;

- (k) " High Court Division " shall mean High Court " High Court Division."
Division of the Supreme Court;
- (l) " Judge " shall include a Chief Justice and an " Judge."
ex-officio judge;
- (m) " Judgment " shall include an order; " Judgment."
- (n) " Matter " shall include every proceeding in the " Matter."
Court not in a cause;
- (o) " Party " shall include a person served with notice " Party."
of or attending, a proceeding, although not named
on the record;
- (p) " Petitioner " shall include a person making an " Petitioner."
application to the Court, either by petition, motion
or summons, otherwise than as against any de-
fendant;
- (q) " Pleading " shall include a petition or summons, " Pleading."
the statement in writing of the claim or demand
of a plaintiff, of the defence of a defendant
thereto, and of the reply of the plaintiff to a
counterclaim of a defendant;
- (r) " Plaintiff " shall include a person asking any " Plaintiff."
relief otherwise than by way of counter-claim as
a defendant against any other person by any
form of proceeding;
- (s) " Proper officer " where that expression is used " Proper
with respect to a duty to be discharged under this officer."
Act or the Rules and that duty has been hereto-
fore discharged by a particular officer, shall
mean that officer, and where that expression is
used in respect to a new duty under this Act or
the Rules shall mean the officer to whom the
duty is assigned by this Act or by the Rules or
if it is not assigned to any officer shall mean such
officer as shall from time to time be directed to
discharge the duty, if it relates to the Appellate
Division by the Chief Justice of Ontario, or if it
relates to the High Court Division by the Presi-
dent of that Division;
- (t) " Rules " shall mean Rules of Court, and shall " Rules."
include those made under the authority of this or
any other Act, and those approved by the Lieuten-
ant-Governor in Council on the 11th day of July;
1913;
- (u) " Supreme Court " shall mean Supreme Court of " Supreme
Ontario. 3-4 Geo. V. c. 19, s. 2 (1). Court."

CONSTITUTION AND JUDGES OF SUPREME COURT.

Supreme
Court
continued.

Jurisdiction
of Supreme
Court.

3. The Supreme Court shall be continued as a superior court of record, having civil and criminal jurisdiction, and it shall have all the jurisdiction, power and authority which on the 31st day of December, 1912, was vested in or might be exercised by the Court of Appeal or by the High Court of Justice or by a Divisional Court of that Court, and such jurisdiction, power and authority shall be exercised in the name of the Supreme Court. 3-4 Geo. V. c. 19, s. 3.

Supreme
Court to
consist of
two divi-
sions.

4. The Supreme Court shall continue to consist of two branches or divisions, which shall be designated respectively "The Appellate Division of the Supreme Court of Ontario," and "The High Court Division of the Supreme Court of Ontario." 3-4 Geo. V. c. 19, s. 4.

Constitution
of Appellate
Division.

5. The Appellate Division shall continue to consist of a Chief Justice, who shall be the President of the Division and shall be called the Chief Justice of Ontario, and four other judges, to be called Justices of Appeal, and of the other Judges of the High Court Division who for the time being constitute or are members of a Divisional Court. 3-4 Geo. V. c. 19, s. 5.

Constitution
of High
Court
Division.

6.—(1) The High Court Division shall continue to consist of fourteen judges.

Chancellor
and Chief
Justices to
retain rank
and title.

(2) The Chancellor of Ontario, the Chief Justice of the King's Bench, the Chief Justice of the Exchequer and the Chief Justice of the Common Pleas shall retain their present rank and titles, and the senior of them for the time being or the last of them who holds office as the case may be shall be the President of the High Court Division.

Senior to be
President of
High Court
Division.

Rank of
present
Justices of
Appeal.

(3) The Justices of Appeal now holding office shall retain their present rank and precedence.

When
vacancy
occurs office
to be
abolished.

(4) When a vacancy occurs in any of the offices mentioned in subsection 2, the office which becomes vacant shall be abolished.

When all the
offices cease
to exist
High Court
Division to
consist of
a Chief
Justice and
thirteen
other Judges.

(5) When all of the offices mentioned in subsection 2 have ceased to exist, the High Court Division shall consist of a Chief Justice, who shall be the President of the Division and shall be called the Chief Justice of the High Court, and thirteen other judges. 3-4 Geo. V. c. 19, s. 6.

Precedence
of Chief
Justice of
Ontario.

7.—(1) The Chief Justice of Ontario shall have rank and precedence over all the other Judges.

Precedence
of Chief
Justice of
High Court
and Justices
of Appeal.
Precedence
of other
Judges.

(2) The Chief Justice of the High Court shall have rank and precedence next after the Chief Justice of Ontario.

(3) The Justices of Appeal hereafter appointed and the other Judges shall have rank and precedence after the Chief

Justice of the High Court and among themselves according to seniority of appointment.

(4) Subsections 2 and 3 shall be subject to the provisions of section 6. 3-4 Geo. V. c. 19, s. 7. Subject to s. 6.

8. Every judge appointed to the Appellate Division or to the High Court Division shall be a Judge of the Supreme Court and shall be *ex officio* a Judge of the Division of which he is not a member, and, except where it is otherwise expressly provided, all the Judges of the Supreme Court shall have in all respects equal jurisdiction, power and authority. 3-4 Geo. V. c. 19, s. 8. Every Judge to be a Judge of the Supreme Court.

9.—(1) Every judge hereafter appointed, before entering on the duties of his office, shall take and subscribe the following oath:— Oath of office.

“I do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as Form.
so help me God.”

(2) The oath shall be administered to a Chief Justice before the Lieutenant-Governor in Council, to a Justice of Appeal by the Chief Justice of Ontario, and to a Judge of the High Court Division by the President of that Division, unless the Lieutenant-Governor in Council in any case otherwise directs, and in that event before such officer or functionary and in such manner as the Lieutenant-Governor in Council may direct. 3-4 Geo. V. c. 19, s. 9. How oath to be administered.

10.—(1) Where a judge resigns his office or is appointed to any other court, he may at any time within eight weeks after his resignation or appointment give judgment in any cause, action or matter previously tried by or heard before him, as if he had not so resigned or been appointed. Giving of judgment by Judge who resigns or is appointed to another Court.

(2) Where he has heard a cause, action or matter jointly with other judges in a Divisional Court he may at any time within the period mentioned in subsection 1 take part in the giving of judgment by that court as if he were still a member of it. When to take part in judgment.

(3) Where he does not take part in the giving of judgment or where a judge by whom a cause, action or matter has been heard in a Divisional Court is absent from illness or any other cause or dies, the remaining judges of the court, or, if there is a difference of opinion, a majority of them may give judgment as if the judge who has so resigned or been appointed or is dead were still a member of the court and taking part in the judgment, and in the case of absence as if the absent judge were present and taking part in the judgment. Judgment of remaining Judges or majority.

(4) Where a judge who has heard a cause, action or matter in a Divisional Court is not present when the judgment of the court is delivered, his written judgment may be read by one Reading judgment of absent judge.

of the other judges and shall have the same effect as if he were present. 3-4 Geo. V. c. 19, s. 10.

SEAL.

Seal.

11. There shall be a seal for the Supreme Court to be approved by the Lieutenant-Governor in Council. 3-4 Geo. V. c. 19, s. 11.

JURISDICTION AND LAW.

Jurisdiction
to be exer-
cised by
Appellate
Division.

12.—(1) The Appellate Division shall exercise that part of the jurisdiction vested in the Supreme Court which, on the 31st day of December, 1912, was vested in the Court of Appeal and in the Divisional Courts of the High Court, and such jurisdiction shall be exercised by a Divisional Court of the Appellate Division, and in the name of the Supreme Court.

Jurisdiction
to be exer-
cised by
High Court
Division.

(2) Except as provided by the next preceding subsection, all the jurisdiction vested in the Supreme Court shall be exercised by the High Court Division in the name of the Supreme Court. 3-4 Geo. V. c. 19, s. 12.

Jurisdiction
of Chief
Justice and
Justices of
Appeal.

13.—(1) All jurisdiction, power and authority which on the 31st day of December, 1912, was vested in or exercisable by the Chief Justice of Ontario or by a Justice of Appeal, shall be vested in and may be exercised by a Judge of the Appellate Division, and shall be exercised in the name of the Supreme Court.

Jurisdiction
of Judges
of the High
Court
Division.

(2) All jurisdiction, power and authority which on the 31st day of December, 1912, was vested in or exercisable by a Judge of the High Court shall be vested in and may be exercised by a Judge of the High Court Division, and shall be exercised in the name of the Supreme Court. 3-4 Geo. V. c. 19, s. 13.

Provisions
for absence
or vacancy
in office of
a Judge.

14. Upon the request of the judge or judges for or with whom he is requested to sit or act, or upon the request of the Chief Justice of Ontario or of the President of the High Court Division, any Judge of the Supreme Court or any retired judge of that Court may sit and act as a judge of either of the divisions of the Supreme Court, or perform any other official or ministerial act for or on behalf of any judge absent from illness or any other cause, or in the place of any judge whose office has become vacant, or as an additional judge of a Divisional Court; and while so sitting and acting, any such judge or retired judge shall have all the power and authority of a Judge of the Supreme Court. 3-4 Geo. V. c. 19, s. 14.

Sittings of
Courts.

15.—(1) Subject to the Rules, the Courts and the judges thereof, or any commissioner appointed under section 49,

may sit and act, at any time and at any place, for the transaction of any part of the business of such Courts, or of such judges or commissioner or for the discharge of any duty which by any statute, or otherwise, is required to be discharged.

(2) Subject to subsection 1 the Divisional Courts shall sit at Toronto. 3-4 Geo. V. c. 19, s. 15.

Where Divisional Court
Sittings to
be held.

ADMINISTRATION OF JUSTICE.

16. In every civil cause or matter law and equity shall be administered according to the following rules:—

Rules of
law.

- (a) Where a plaintiff claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any defendant in such cause or matter, or to any relief founded upon a legal right which before the passing of *The Ontario Judicature Act, 1881*, could only have been given by a 44 V. c. 5. Court of Equity, the Supreme Court and every judge shall give to such plaintiff such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purposes properly instituted before the passing of that Act;

Equitable
relief.
- (b) No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right, whether any consequential relief is or could be claimed or not;

Declaratory
judgments
and orders.
- (c) Where a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any plaintiff in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff in such cause or matter, the Court and every judge shall give to every equitable estate, right or ground of relief so claimed and to every ground of equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in a suit or proceeding instituted in that court for the same or the like purpose before the passing of *The Ontario Judicature Act*, 44 V. c. 5. 1881;

Equitable
defences.

Relief which
may be
granted to
defendants.

(d) The Court and every judge shall also have power to grant to any defendant in respect of any equitable estate or right or other matter of equity, and also in respect of ~~the~~ legal estate, right or title claimed or asserted by him, all such relief against any plaintiff as such defendant shall have properly claimed by his pleading, and as the Court or any judge might have granted in a suit instituted for that purpose by the same defendant against the same plaintiff; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to the Rules or to any order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall henceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant;

Courts to
take notice
of equitable
rights and
duties.

(e) The Court and every judge shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of *The Ontario Judicature Act, 1881*;

44 V. c. 5.

Restraining
proceedings.

(f) No cause or proceeding shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, prior to *The Ontario Judicature Act, 1881*, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto; but nothing in this Act shall disable the Court from directing a stay of proceedings in any cause or matter pending before it; and any person, whether a party or not to any such cause or matter, who would have been entitled, prior to *The Ontario Judicature Act, 1881*, to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, or order, contrary to which all or any part of the proceed-

44 V. c. 5.

44 V. c. 5.

ings in such cause or matter may have been taken, may apply to the Court by motion in a summary way, for a stay of proceedings in such cause or matter ~~en masse~~ ^{generally}, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such order as shall be deemed just;

- (g) Subject to the foregoing provisions for giving effect to equitable rights and other matters of equity and the other express provisions of this Act, the Court and every judge shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations and liabilities existing by the common law or created by any statute, in the same manner as the same would have been recognized and given effect to prior to *The Ontario Judicature Act, 1881*, by any of the courts then existing and whose jurisdiction is now vested in the Supreme Court; Giving effect to legal claims. 44 V. c. 5.

- (h) The Court in the exercise of the jurisdiction vested in it by this Act in every cause or matter pending before it, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as it shall deem just, all such remedies as any of the parties may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them in such cause or matter so that, as far as possible, all matters so in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided. 3-4 Geo. V. c. 19. s. 16.

17. A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court, in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally, or upon such terms and conditions as the Court shall deem just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, whether the person against whom it is sought is or is not in possession under any claim of title or otherwise, or if out of possession does or does not claim a right to do the act sought to be restrained under a colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable. 3-4 Geo. V. c. 19, s. 17.

18. Where the Court has jurisdiction to entertain an application for an injunction against a breach of a covenant, ^{Court may} award damages, etc.

contract or agreement or against the commission or continuance of a wrongful act, or for the specific performance of a covenant, contract or agreement, the Court may award damages to the party injured either in addition to or in substitution for such injunction or specific performance, and such damages may be ascertained in such manner as the Court may direct, or the Court may grant such other relief as may be deemed just. 3-4 Geo. V. c. 19, s. 18.

Relief
against pen-
alties, etc.

19. The Court shall have power to relieve against all penalties and forfeitures, and in granting such relief to impose such terms as to costs, expenses, damages, compensation and all other matters as may be deemed just. 3-4 Geo. V. c. 19, s. 19.

Jurisdiction
as to val-
idity of pro-
vincial
statute.

20.—(1) The Court shall have jurisdiction to entertain an action at the instance of either the Attorney General for Canada, or the Attorney General of Ontario, for a declaration as to the validity of any statute, or any provision in any statute of this Legislature, though no further relief be prayed or sought, and the action shall be sufficiently constituted if such Attorney General is a party thereto.

Judgment
appealable.

(2) A judgment in the action shall be appealable like other judgments of the Court. 3-4 Geo. V. c. 19, s. 20.

Stay of pro-
ceedings if
action for
same cause
is pending
out of
Ontario.

21. Where an action is brought in the Supreme Court for a cause of action for which a suit or action has been brought and is pending between the same parties or their representatives in any place or country out of Ontario, the Court or a Judge may make an order staying all proceedings in the Supreme Court until satisfactory proof is offered to the Court or a Judge that the suit or action so brought in such other place or country out of Ontario is determined or discontinued. 3-4 Geo. V. c. 19, s. 21.

Rules of
equity to
prevail.

22. In questions relating to the custody and education of infants, and generally in all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail. 3-4 Geo. V. c. 19, s. 22.

Sections
16 to 22 to
apply to
all Courts.

23. The provisions of sections 16 to 22 shall be in force and have effect in all courts so far as the matters to which they relate are cognizable by such courts. 3-4 Geo. V. c. 19, s. 23.

APPEALS.

Certain
orders not
subject to
appeal.

24. No order of the High Court Division or of a Judge thereof made with the consent of parties shall be subject to appeal, and no order of the High Court Division or of a Judge thereof as to costs only which by law are left to the discretion of the Court shall be subject to appeal on the

ground that the discretion was wrongly exercised, or that it was exercised under a misapprehension as to the facts or the law or on any other ground, except by leave of the Court or Judge making the order. 3-4 Geo. V. c. 19, s. 24.

25.—(1) There shall be no appeal to a Divisional Court from an interlocutory order of the High Court Division, whether made in Court or Chambers, where before *The Ontario Judicature Act, 1881*, there would have been no relief from a like order by an application to a superior court. Appeals from interlocutory orders. 44 V. c. 5.

(2) Any doubt which may arise as to what orders are interlocutory shall be determined by the Divisional Court. 3-4 Geo. V. c. 19, s. 25. Determining what are interlocutory.

26.—(1) Subject to sections 24 and 25 and to the Rules regulating the terms and conditions on which appeals may be brought, an appeal shall lie to a Divisional Court from— Appeals to Divisional Court.

(a) any judgment, order or decision of a Judge of the High Court Division in Court, whether at the trial or otherwise;

(b) any judgment, order or decision of a Judge in Chambers in regard to a matter of practice or procedure which affects the ultimate rights of any party, and subject to the Rules from any other judgment, order or decision of a Judge in Chambers in regard to a matter of practice or procedure.

(2) A Divisional Court shall also have jurisdiction as provided by Additional jurisdiction under certain statutes.

(a) *The Ontario Voters' Lists Act*;

Rev. Stat. c. 6.

(b) *The Ontario Election Act*;

Rev. Stat. c. 8.

(c) *The Ontario Controverted Elections Act*;

Rev. Stat. c. 10.

(d) *The Registry Act*;

Rev. Stat. c. 124.

(e) *The Ontario Companies Act*;

Rev. Stat. c. 178.

(f) *The Assessment Act*;

Rev. Stat. c. 195.

(g) *The Liquor License Act*;

Rev. Stat. c. 215.

(h) *The Ontario Summary Convictions Act*;

Rev. Stat. c. 90.

(i) *The Ontario Habeas Corpus Act*;

Rev. Stat. c. 84.

(j) *The Mechanics' and Wage Earners' Lien Act*;

Rev. Stat. c. 140.

(k) *The Criminal Code*;

R.S.C. c. 146.

(l) *The Winding-up Act*; of Canada.

R.S.C. c. 144.

(m) *The Municipal Drainage Act*;

Rev. Stat. c. 198.

- Rev. Stat. c. 21. (n) *The Succession Duty Act*;
 Rev. Stat. c. 62. (o) *The Surrogate Courts Act*;
 Rev. Stat. c. 59. (p) *The County Courts Act*;
 Rev. Stat. c. 63. (q) *The Division Courts Act*;
 Rev. Stat. c. 129. (r) *The Water Privileges Act*;
 Rev. Stat. c. 130. (s) *The Rivers and Streams Act*; and
 (t) Any other Act of the Parliament of Canada or of this Legislature.

New trials. (3) A Divisional Court shall also have jurisdiction to hear and determine applications for new trials and applications to set aside verdicts and findings of juries in actions and matters tried or heard in the High Court Division.

Generality of subsec. 1 of sect. 12 not affected. (4) Nothing in this section shall limit the generality of the provisions of subsection 1 of section 12. 3-4 Geo. V. c. 19, s. 26.

Court may pronounce proper judgment.

27.—(1) The Court upon an appeal may give any judgment which ought to have been pronounced and may make such further or other order as may be deemed just.

Power to draw inferences of fact and to give judgment if all necessary materials before the Court.

(2) The Court shall have power to draw inferences of fact not inconsistent with any finding of the jury which is not set aside, and if satisfied that there are before the Court all the materials necessary for finally determining the matters in controversy, or any of them, or for awarding any relief sought, the Court may give judgment accordingly, but if the Court is of opinion that there are not sufficient materials before it to enable it to give judgment the Court may direct the appeal to stand over for further consideration and may direct that such issues or questions of fact be tried and determined and such accounts be taken and such inquiries be made as may be deemed necessary to enable the Court on such further consideration finally to dispose of the matters in controversy.

Or to direct further inquiry.

Where appeal is against part only.

(3) The powers conferred by subsections 1 and 2 may be exercised notwithstanding that the appeal is as to part only of the judgment, order or decision, and may be exercised in favour of all or any of the parties, although they may not have appealed. 3-4 Geo. V. c. 19, s. 27.

New trial not to be granted in certain cases.

28.—(1) A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to the jury, unless some substantial wrong or miscarriage has been thereby occasioned.

(2) If it appears that a substantial wrong or miscarriage was so occasioned but it affected part only of the matter in controversy or some or one only of the parties, the Court may give final judgment as to any part or any party not so affected, and direct a new trial as to the other part only, or only as to the other parties. 3-4 Geo. V. c. 19, s. 28.

Judgment
as to one
part and
new trial
as to others.

29. A new trial may be ordered upon any question without interfering with the decision upon any other question. 3-4 Geo. V. c. 19, s. 29.

New trial
may be
ordered on
any ques-
tion.

30. Where the jury disagrees or makes no finding on which judgment can be entered, the Court may, on the application of the defendant, dismiss the action on the ground that there is no evidence to warrant a judgment for the plaintiff, or that for any other reason he is not entitled to judgment. 3-4 Geo. V. c. 19, s. 30.

Disagree-
ment of
jury.

31. In any cause or matter pending before a Divisional Court any direction incidental to it not involving the decision of the appeal, may be given by a Judge of the Appellate Division; and a Judge of that Division may during vacation make any interim order to prevent prejudice to the claim of any of the parties pending an appeal, as he may think fit; but every such order made by the Judge shall be subject to appeal to a Divisional Court. 3-4 Geo. V. c. 19, s. 31.

Power of
Judge of
Appellate
Division.

EFFECT OF JUDICIAL DECISIONS.

32.—(1) The decision of a Divisional Court on a question of law or practice unless overruled or otherwise impugned by a higher court shall be binding on all Divisional Courts and on all other courts and judges and shall not be departed from in subsequent cases without the concurrence of the judges who gave the decision.

Decisions of
Divisional
Court to
be binding.

(2) It shall not be competent for any Judge of the High Court Division in any case before him to disregard or depart from a prior known decision of any other judge of co-ordinate authority on any question of law or practice without his concurrence.

Judge to
follow
known prior
decision of
Judge of
co-ordinate
authority.

(3) If a Judge deems a decision previously given to be wrong and of sufficient importance to be considered in a higher court, he may refer the case before him to a Divisional Court.

If decision
deemed
wrong,
reference
may be
made to a
Divisional
Court.

(4) Where a case is so referred, it shall be set down for hearing, and notice of hearing shall be given in like manner as in the case of an appeal to a Divisional Court. 3-4 Geo. V. c. 19, s. 32.

Procedure
thereon.

CONSTITUTIONAL QUESTIONS.

Notice to be given to Attorneys-General of Canada and of Ontario before Act declared invalid.

33.—(1) Where in any action or other proceeding, the constitutional validity of any Act or enactment of the Parliament of Canada or of this Legislature is brought in question, the same shall not be adjudged to be invalid until after notice has been given to the Attorney General for Canada, and the Attorney General of Ontario.

Form of notice.

(2) The notice shall state what Act or part of an Act is in question, and the day on which the question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued.

Six days' notice necessary.

(3) Subject to the Rules, the notice shall be served six days before the day named for the argument.

Right of Attorneys-General to be heard.

(4) The Attorney General for Canada and the Attorney General of Ontario shall be entitled, as of right, to be heard, either in person or by counsel, notwithstanding that the Crown is not a party to the action or proceeding. 3-4 Geo. V. c. 19, s. 33.

INTEREST.

Interest may be allowed as heretofore.

34. Interest shall be payable in all cases in which it is now payable by law, or in which it has been usual for a jury to allow it. 3-4 Geo. V. c. 19, s. 34.

When allowable on debts certain and overdue.

35.—(1) On the trial of any issue, or on any assessment of damages, upon any debt or sum certain, payable by virtue of a written instrument at a time certain, interest may be allowed from the time when the debt or sum became payable.

When allowable after demand of payment.

(2) If such debt or sum is payable otherwise than by virtue of a written instrument at a time certain, interest may be allowed from the time when a demand of payment was made in writing, informing the debtor that interest would be claimed from the date of the demand.

Interest by way of damages in certain actions.

(3) In actions for the conversion of goods or for trespass *de bonis asportatis*, the jury may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance may give interest over and above the money recoverable thereon.

Interest on judgments.

(4) Unless otherwise ordered by the Court, a verdict or judgment shall bear interest from the time of the rendering of the verdict, or of giving the judgment, as the case may be, notwithstanding that the entry of judgment shall have been suspended by any proceeding in the action including an appeal. 3-4 Geo. V. c. 19, s. 35.

* CERTIFICATE OF LIS PENDENS.

36.—(1) The institution of an action or the taking of a proceeding, in which any title to or interest in land is brought in question, shall not be deemed notice of the action or proceeding to any person not a party to it, until, where the land is registered under *The Land Titles Act* a caution is registered under that Act, nor in other cases until a certificate, signed by the proper officer of the Court has been registered in the Registry Office of the registry division in which the land is situate.

Action, etc.,
not notice
unless
caution or
certificate
registered.
Rev. Stat.
c. 126.

(2) The certificate may be in the following form:—

Form.

"I certify that in an action or proceeding in the Supreme Court of Ontario, between *A. B.*, of and *C. D.*, of some title or interest is called in question in the following land (*describing it.*)"

Dated at (*stating date and place.*)

(3) Subsection 1 shall not apply to an action or proceeding for foreclosure or sale upon a registered mortgage. 3-4 Geo. V. c. 19, s. 36.

Exception.

37.—(1) Where a caution or certificate is registered, and the plaintiff, or other party at whose instance it was issued, does not in good faith prosecute the action or proceeding, a Judge of the High Court Division may at any time make an order vacating the caution or certificate.

Order
vacating
caution or
certificate
on failure
to prosecute
action.

(2) Where a caution or certificate is registered, and the plaintiff's claim is not solely to recover land, or an estate or interest in land, but to recover money or money's worth, chargeable on or payable out of land, or some estate or interest in it, or for the payment of which he claims that the land or such estate or interest ought to be subjected, or where the plaintiff claims land or some estate or interest in land, and, in the alternative, damages or compensation in money or money's worth, a Judge of the High Court Division may at any time make an order vacating the caution or certificate upon such terms as to giving security or otherwise as may be deemed just.

Where land,
etc., not
claimed.

(3) A Judge of the High Court Division may at any time vacate the registration upon any other ground which may be deemed just.

Upon other
grounds.

(4) On an application under this section, the Judge may order any of the parties to the application to pay the costs of any of the other parties to it, or may make any other order with respect to costs, which under all the circumstances may be deemed just.

Costs.

(5) The order vacating a caution or certificate shall be subject to appeal according to the practice in like cases, and may be registered in the same manner as a judgment affecting land on or after the fourteenth day from the date of the

Appeal from
order.

Registration
of order.

order, unless the order is meanwhile reversed or its registration is postponed or forbidden by an order of a Judge of the High Court Division.

Effect of
vacating
caution or
certificate.

(6) Where a caution or certificate is vacated, any person may deal in respect to the land as fully as if the caution or certificate had not been registered, and it shall not be incumbent on any purchaser or mortgagee to enquire as to the allegations in the action or proceeding, and his rights shall not be affected by his being aware of such allegations. 3-4 Geo. V. c. 19, s. 37.

SITTINGS AND DISTRIBUTION OF BUSINESS.

Divisional
Courts of
Appellate
Division.

38.—(1) There shall be as many Divisional Courts of the Appellate Division as are necessary for the proper despatch of the business of the Division.

To be two
Divisional
Courts.

(2) There shall at all times be at least two of such Divisional Courts.

How
constituted.
To be
numbered.

(3) A Divisional Court shall consist of five judges.

(4) The Divisional Courts shall be numbered consecutively. 3-4 Geo. V. c. 19, s. 38.

First
Divisional
Court.

39.—(1) The first Divisional Court shall consist of the Chief Justice of Ontario and the four Justices of Appeal.

Annual
selection of
judges for
second
Divisional
Court.

(2) The Judges of the Supreme Court shall at a meeting to be held in the month of December in each year and not later than the second Monday in the month, select from among the Judges of the High Court Division, the judges to constitute the second Divisional Court for the next ensuing calendar year, and when such selection has been made, the judges so selected shall be the judges to constitute that Divisional Court for that year.

Additional
Divisional
Courts.

(3) Whenever the volume of business in the Appellate Division requires that an additional Divisional Court or additional Divisional Courts be constituted, the Judges of the Supreme Court shall select the judges to constitute such Court or Courts.

Permanent
and tem-
porary
Divisional
Courts.

(4) The first and second Divisional Courts shall be permanent Divisional Courts, and those constituted under the provisions of subsection 3 shall be temporary Divisional Courts.

Failure of
Judges to
make
selection.

(5) In the event of the Judges of the Supreme Court failing at the prescribed time to select the judges who are to constitute the Divisional Courts or any of them, the selection may be made at a later date.

Judges
of one
Divisional
Court may
sit in
another.

(6) Whenever occasion requires, a judge of any Divisional Court may sit in the place of a judge of any other Divisional Court.

(7) Whenever occasion requires, a judge who is not a member of a Divisional Court may sit in the place of a judge of any Divisional Court.

Ad hoc
judges of
Divisional
Courts.

(8) Subsections 6 and 7 shall apply where a vacancy occurs in a Divisional Court by the death or resignation of a judge or otherwise, until, in the case of the first Divisional Court, his successor is appointed, and in the case of any other Divisional Court until his successor is selected, as provided by subsection 9.

Application
of subsecs.
6, 7 in
case of
vacancy.

(9) Where a vacancy occurs in a Divisional Court, except the first, by the death or resignation of a judge or otherwise, the Judges of the Supreme Court at a meeting called for that purpose shall select a judge to fill the vacancy for the remainder of the year for which the judge whose place he is selected to fill, was selected.

Filling
vacancy in
Divisional
Courts other
than the
first.

(10) A judge who sits in the place of a judge of a Divisional Court shall be conclusively deemed to have been entitled and qualified to so sit, within the meaning of the next preceding four subsections.

Right of
Judge who
sits in place
of another
not to be
questioned.

(11) A judge who has sat in a Divisional Court on the hearing of any appeal, matter or proceeding therein may give judgment notwithstanding that he has ceased to be a judge of that Court.

Judge may
give judgment
after
ceasing to
be Judge of
Divisional
Court.

(12) A judge shall not sit on the hearing of an appeal from a judgment or order made by himself. 3-4 Geo. V. c. 19, s. 39.

Judge not
to hear
appeal from
his own
judgment.

40. Neither the Chief Justice of Ontario nor any of the Justices of Appeal shall without his consent be assigned to, or required to perform any duty, except such as appertains to him as a member of the Appellate Division. 3-4 Geo. V. c. 19, s. 40.

Chief Justice
of Ontario
and Justices
of Appeal
not to be
assigned to
other work
without
consent.

41.—(1) Appeals to a Divisional Court may be heard and disposed of by a court of four judges.

Four judges
may hear
appeals.

(2) Subsection 1 shall not apply to appeals under *The Ontario Controverted Elections Act* or to cases and matters which come before the Court under the provisions of the Criminal Code, all of which shall be heard and disposed of by a full court of five judges. 3-4 Geo. V. c. 19, s. 41.

Exception
as to
Election
trials and
Criminal
matters.
Rev. Stat. c. 10,
R.S.C. c. 146.

42.—(1) There shall be at least monthly sittings of a Divisional Court, except during vacations, and, subject to subsection 2 and to the Rules and to any other arrangement between the judges constituting the Divisional Courts, such courts shall sit in alternate weeks, but nothing in this section shall prevent a sittings from being held during the long vacation.

Monthly
sittings of
Divisional
Courts.

Sittings
may be held
concur-
rently.

(2) The Divisional Courts may sit concurrently and shall do so whenever necessary for the proper despatch of business.

Presiding
Judge in
absence of
Chief
Justice.

(3) In the absence of the Chief Justice of Ontario, or if he is not a member of the Court, the judge entitled to precedence over the other judges present shall preside. 3-4 Geo. V. c. 19, s. 42.

BUSINESS IN HIGH COURT DIVISION TO BE DISPOSED OF BY A JUDGE.

Business to
be disposed
of by one
Judge.

43.—(1) Every action and proceeding in the High Court Division, and all business arising out of it, except as herein otherwise expressly provided, shall be heard, determined and disposed of before a Judge, and where he sits in Court he shall constitute the Court.

Judge to
constitute
the Court.

Judge not
to reserve
questions.

(2) Subject to section 32, a Judge of the High Court Division shall decide all questions coming properly before him, and shall not reserve any case, or any point in a case, for the consideration of a Divisional Court.

Arrange-
ments for
holding
Courts, etc.

(3) All such arrangements as may be necessary or proper for the holding of any of the courts, or the transaction of business in the High Court Division or the assignment from time to time of judges to hold such courts, or to transact such business, shall be made by the Judges of that Division. 3-4 Geo. V. c. 19, s. 43.

SITTINGS FOR TRIALS.

Sittings for
trials.

44.—(1) There shall be as many sittings of the High Court Division in and for every county as are required for the trial of civil causes, matters and issues and for the trial of criminal matters and proceedings.

Separate
sittings
may be held.

(2) Separate sittings may be held for the trial of civil causes, matters and issues which are to be tried without a jury and separate sittings for those which are to be tried with a jury, and separate sittings may also be held for the trial of criminal matters and proceedings.

Sittings
may be held
concur-
rently.

(3) Sittings may be held concurrently or separately as may be directed by the judges appointing the days therefor or by the judges presiding at such sittings.

Jury cases
to be first
tried.

(4) Subject to the Rules, where a sittings is held for the trial of civil causes, matters and issues which are to be tried with and for those which are to be tried without a jury, separate lists shall be made and the jury cases shall be first disposed of unless the presiding judge otherwise directs.

Sittings to
be held in
county
town.

(5) The sittings shall be held in the court house of the county town or at such other place in the county town as the presiding judge directs.

(6) Subject to the Rules, at least two sittings shall be held in each year in and for every county, and at least one additional sittings in and for the County of York, the County of Carleton, the County of Wentworth, the County of Middlesex, and the United Counties of Dundas, Stormont and Glengarry. 3-4 Geo. V. c. 19, s. 44.

Two sittings yearly in each county.
Additional sittings in certain counties.

45.—(1) Every such sittings shall be presided over by one of the Judges of the Supreme Court, or, on the request in writing of a Judge of the Supreme Court, by a retired judge of that Court, or by a judge of a county court, or by one of His Majesty's Counsel learned in the law appointed for Upper Canada, or for Ontario.

Who may preside.

(2) Such judge or counsel while holding the sittings shall possess and enjoy and may exercise all the powers and authorities of a Judge of the High Court Division, and in civil proceedings may reserve the giving of his decision on questions raised at the trial and afterwards give the same, and such decision shall have the like force and effect as the decision of a Judge of the High Court Division. 3-4 Geo. V. c. 19, s. 45.

Powers of presiding Judge.

46. Where the judge whose duty it is to hold any sittings does not arrive in time, or is not able to open court on the day appointed for that purpose, the sheriff, or, in his absence, his deputy, may, after six o'clock in the afternoon of that day, by proclamation, adjourn the sittings to an hour on the following day to be named by him, and so from day to day until the judge arrives or until other directions from the judge are received. 3-4 Geo. V. c. 19, s. 46.

Course to be pursued by the sheriff if the judge does not arrive on the day appointed for opening Court.

47.—(1) No such sittings shall begin on the first day earlier than one o'clock in the afternoon or on any other day before nine o'clock in the forenoon, nor, except for special reasons, shall it extend beyond seven o'clock in the afternoon, and there shall be an intermission of at least half an hour at or near noon.

When sittings to commence.
Hours of sittings.

(2) Failure to observe any of the provisions of subsection 1 shall not render the trial or other proceeding void. 3-4 Geo. V. c. 19, s. 47.

Non-observance of hours not to affect proceeding.

48. Non-jury actions to be tried in any county except the County of York, may be entered for trial at any sittings of the High Court Division in such county. 3-4 Geo. V. c. 19, s. 48.

Entering non-jury actions for trial.

49.—(1) Commissions of assize or any other commissions, either general or special, may be issued, by the Lieutenant-Governor in Council, assigning to the person therein named, the duty of trying and determining within any place or district named for that purpose by the commission, any cause or matter, or any question or issue of fact or of law or

Commissions of assize and other commissions.

partly of fact and partly of law, in any cause or matter, depending in the Supreme Court; or for the exercise of any civil or criminal jurisdiction capable of being exercised by the Court.

Commissioner to be a Court.

(2) A commissioner, when exercising any jurisdiction so assigned to him shall be deemed to constitute the Court. 3-4 Geo. V. c. 19, s. 49.

ACTIONS ON QUEBEC JUDGMENTS.

Action on Quebec judgment where service personal.

50. Where an action is brought on a judgment obtained in the Province of Quebec in an action in which the service on the defendant or party sued was personal, no defence which might have been set up to the original action may be made to the action on the judgment. 3-4 Geo. V. c. 19, s. 50.

Action on Quebec judgment where service not personal.

51. Where an action is brought on a judgment obtained in the Province of Quebec in an action in which the service was not personal and in which no defence was made, any defence which might have been set up to the original action may be made to the action on the judgment. 3-4 Geo. V. c. 19, s. 51.

Costs.

52.—(1) Where an action is brought on a judgment obtained in the Province of Quebec the costs incurred in obtaining the judgment in that Province shall not be recoverable without the order of a judge directing their allowance.

Conditions under which order may be made.

(2) Such order shall not be made, unless, in the opinion of the judge, the costs were properly incurred nor if it would have been a saving of expense and costs to have first instituted proceedings in Ontario on the original claim. 3-4 Geo. V. c. 19, s. 52.

TRIAL, AND PLACE OF TRIAL.

Certain actions to be tried by a jury.

53. Actions of libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution and false imprisonment shall be tried by a jury unless the parties in person or by their solicitors or counsel waive such trial. 3-4 Geo. V. c. 19, s. 53.

Certain actions against municipalities, etc., to be tried without a jury and venue to be local.

54. Actions against a municipal corporation or board of police trustees for damages in respect of injuries sustained by reason of the default of the corporation in keeping in repair a highway or bridge shall be tried by a judge without the intervention of a jury, and the trial shall take place in the county which constitutes the municipality or in which the municipality or police village is situate. 3-4 Geo. V. c. 19, s. 54.

55.—(1) Subject to the Rules, except where otherwise expressly provided by this Act all issues of fact shall be tried and all damages shall be assessed by the judge without the intervention of a jury.

Issues of fact with certain exceptions to be tried without jury.

(2) The judge may nevertheless direct that the issues or any of them be tried and the damages assessed by a jury. 3-4 Geo. V. c. 19, s. 55.

Judge may direct trial by jury.

56.—(1) Subject to the Rules, if a party desires that the issues of fact shall be tried or the damages assessed by a jury he may, at any stage of the proceedings, but not later than the fourth day after the close of the pleadings or if notice of trial or assessment is served before that time, within two days after service of such notice or within such other time as may be allowed by a judge, file and serve on the opposite party a notice in writing requiring that the issues be tried or the damages assessed by a jury, and if such notice is given, subject to subsection 3, they shall be tried or assessed accordingly.

Where jury required notice to be given.

(2) A copy of the notice shall be attached to the certified copy of the pleadings prepared for use at the trial.

Copy of notice to be annexed to record.

(3) Notwithstanding the giving of the notice the issues of fact may be tried or the damages assessed without the intervention of a jury if the judge presiding at the sittings so directs or if it is so ordered by a judge.

Jury may be dispensed with.

(4) Subsection 1 shall not apply to causes, matters or issues over the subject of which before *The Administration of Justice Act, 1873*, the Court of Chancery had exclusive jurisdiction. 3-4 Geo. V. c. 19, s. 56.

Subsection 1 not to apply to certain causes, etc. 36 V. c. 8.

57.—(1) Subject to subsection 2, no proviso, condition, stipulation, agreement or statement which provides for the place of trial of any action, matter or other proceeding shall be of any force or effect.

Effect of agreement, etc., as to place of trial.

(2) Subsection 1 shall not apply or be available unless and until the defendant moves to change the place of trial. 3-4 Geo. V. c. 19, s. 57.

Motion by defendants to change venue.

JURY TRIALS.

58.—(1) It shall be sufficient if ten of the jurors agree, and a verdict rendered or question answered by ten jurors shall have the same effect as a verdict or answer given by twelve jurors.

Agreement of ten jurors in verdict or answers to be sufficient.

(2) This section shall apply to special juries.

Special juries.

(3) Where more questions than one are submitted, it shall not be necessary that the same ten jurors shall agree to every answer. 3-4 Geo. V. c. 19, s. 58.

Not necessary for same ten jurors to agree to all answers.

Death or illness of juror or discovery interest during trial.

59. If at the trial of an action or issue or assessment of damages, a juror dies or becomes incapacitated from any cause from continuing to sit or act on the jury, or if it is discovered that a juror has an interest in the result of the proceeding, or is a relative within the degree of first cousin of any of the parties the judge may discharge such juror, and may direct that the trial or assessment shall proceed on such terms as he deems just with eleven jurors, and in such case ten jurors may give the verdict or answer the questions submitted to the jury. 3-4 Geo. V. c. 19, s. 59.

General or special verdict may be given unless Judge otherwise directs.

60.—(1) In the absence of a direction to the contrary of the judge, a jury may give a general or special verdict, but shall give a special verdict if he so directs and shall not give a general verdict if directed by him not to do so.

Not to apply to actions of libel.

(2) This section shall not apply to actions of libel. 3-4 Geo. V. c. 19, s. 60.

Except in actions of libel, the jury may be directed to answer questions.

61.—(1) Upon a trial by jury, except in an action for libel, the judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact stated to them by him; and the jury shall answer such questions, and shall not give any verdict.

Judgment may be entered on answers.

(2) Judgment may be directed to be entered on the answers to such questions. 3-4 Geo. V. c. 19, s. 61.

ACTIONS FOR MALICIOUS PROSECUTION.

Question of reasonable and probable cause to be decided by judge.

62. In actions for malicious prosecution, the judge shall decide all questions both of law and fact necessary for determining whether or not there was reasonable and probable cause for the prosecution. 3-4 Geo. V. c. 19, s. 62.

QUASHING CONVICTIONS, ETC.

Procedure substituted for *certiorari*, etc.

63.—(1) Where it is desired to move to quash a conviction, order, warrant or inquisition, the proceeding shall be by motion in the first instance instead of by *certiorari*, rule or order *nisi*.

Service of notice of motion.

(2) Notice of the motion shall be served at least six days before the return day thereof upon the magistrate making the conviction or order, or issuing the warrant, or the coroner making the inquisition, and also upon the prosecutor or informant, if any, and upon the clerk of the peace if the proceedings have been returned to his office, and the notice shall specify the objections intended to be raised.

Endorsement on notice of motion.

(3) Upon the notice of motion shall be endorsed a copy of subsection 4 and a notice in the following form, addressed

to the magistrate, coroner or clerk of the peace, as the case may be:

"You are hereby required forthwith after service hereof to return ^{Form.} to the Central Office at Osgoode Hall, Toronto, the conviction (*or as the case may be*) herein referred to, together with the information and evidence, if any, and all things touching the matter, as fully and entirely as they remain in your custody, together with this notice.

"Dated

"To A. B.

"Magistrate (*or as the case may be*).

"C. D.,

"Solicitor for the Applicant."

(4) Upon receiving the notice so endorsed, the magistrate, coroner or clerk of the peace shall forthwith return to the Central Office, the conviction, order, warrant or inquisition, and the information and evidence, if any, and all things touching the matter, and the notice served upon him with a certificate endorsed upon it in the following form:

Return by
Magistrate,
etc.

Pursuant to the within notice I herewith return to this Honour-^{Form.}able Court the following papers and documents:—

"1. The conviction (*or as the case may be*);

"2. The information and the warrant issued thereon;

"3. The evidence taken at the hearing;

"4. (*Any other papers or documents touching the matter*).

"And I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody or power relating to the matter set forth in this notice of motion."

(5) The certificate shall have the same effect as a return to a writ of *certiorari* or to an order under the Rules.

Effect of
certificate.

(6) The notice shall be returnable before a Judge of the High Court Division sitting in Chambers.

Notice re-
turnable
before
Judge in
Chambers.

(7) The motion shall not be entertained—

Limitation
of time for
proceedings.

(a) unless the return day thereof is within six months after the conviction, order, warrant or inquisition; and

(b) the applicant is shown to have entered into a recognizance with one or more sufficient sureties in the sum of \$100 before a Magistrate of the county within which the conviction, order or inquisition was made or the warrant was issued, or before a judge of the county court of that county or before a Judge of the High Court Division, conditioned that the applicant will prosecute the application at his own costs and charges without any wilful or affected delay and that he will pay to the person in whose favour the conviction, order or other proceeding is affirmed his full costs and charges to be taxed according to the course of the Court in case the conviction, order or other proceeding is affirmed, or

Security
to be given.

has paid into Court the like sum as security that he will do so.

Recogniz-
ance to be
filed.

(8) The recognizance, with an affidavit of its due execution shall be filed with the Clerk in Chambers.

Powers of
Judge.
Appeal.

(9) The Judge shall have all the powers of the Court in the like matters and may order the production of papers and documents as he may deem necessary.

No appeal
without
leave.

(10) No appeal from the order of the Judge shall lie unless leave is granted by a Judge of the High Court Division. 3-4 Geo. V. c. 19, s. 63.

REFERENCES TO OFFICIAL AND SPECIAL REFEREES.

Reference
for inquiry
and report.

64.—(1) Subject to the Rules and to any right to have particular cases tried by a jury, a Judge of the High Court Division may refer any question arising in an action for inquiry and report either to an official referee or to a special referee agreed upon by the parties.

Where
Crown
interested.

(2) Subsection 1 shall not, unless with the consent of His Majesty authorize the reference to an official referee of an action to which His Majesty is a party or of any question or issue therein. 3-4 Geo. V. c. 19, s. 64.

Power to
refer in
certain
cases.

65. In an action,

- (a) if all the parties interested who are not under disability consent, and where there are parties under disability the Judge is of opinion that the reference should be made and the other parties interested consent; or,
- (b) where a prolonged examination of documents or a scientific or local investigation is required which cannot in the opinion of the Court or a Judge conveniently be made before a jury or conducted by the Court directly; or,
- (c) where the question in dispute consists wholly or partly of matters of account,

a Judge of the High Court Division may at any time refer the whole action or any question or issue of fact arising therein or question of account either to an official referee or to a special referee agreed upon by the parties. 3-4 Geo. V. c. 19, s. 65.

Special
referee to
be an
officer of
the Court.
Remunera-
tion of
special
referee.

66.—(1) In the case of a reference to a special referee he shall be deemed to be an officer of the Court.

(2) The remuneration to be paid to a special referee may be determined by a Judge of the High Court Division.

(3) The remuneration, fees, charges and disbursements payable to an official referee, and, in the absence of any special direction, to a special referee shall be the same as are payable to a local master.

Scale of remuneration of referee.

(4) Where the Judge at the trial instead of trying an action refers the whole action under the provisions of section 65 to an official referee who is a local registrar or deputy registrar, a deputy clerk of the crown and pleas, a local master or other officer of the Court, paid wholly or partly by salary, no fees, either in law stamps or otherwise, shall be charged by the referee. 3-4 Geo. V. c. 19, s. 66.

No fees when whole action is referred to officer of Court.

67. The referee shall make his findings and embody his conclusions in the form of a report, and his report shall be subject to all the incidents of a report of a master on a reference as regards filing, confirmation, appealing therefrom, motions thereupon and otherwise, including appeals to a Divisional Court. 3-4 Geo. V. c. 19, s. 67.

Referee to make report.

68. The evidence of witnesses examined upon the reference, and the exhibits shall forthwith, after the making of the report, be transmitted by the referee to the proper officer of the Court. 3-4 Geo. V. c. 19, s. 68.

Transmission of evidence and exhibits.

SURETY COMPANIES.

69.—(1) In this section “Surety Company” shall mean an incorporated company empowered to give bonds by way of indemnity.

“Surety Company.”

(2) The Lieutenant-Governor in Council may direct that the bond of any surety company named in the order in council may be given as security in all cases where security is ordered to be given by any court or by any judge or officer of any court, and in all cases where security for the costs of an appeal, or for the prosecution of the appeal, is required by any law, rule or practice.

Bonds of company may be taken as security.

(3) Every order in council made under subsection 2 shall forthwith be published in the *Ontario Gazette* and shall be laid before the Assembly within 15 days after the making thereof if the Assembly is then in session, and if it is not in session within 15 days after the opening of the next session.

Order in council approving of company to be published in Gazette.

(4) The bond of any surety company named in the order in council shall be sufficient without any other surety joining in the bond, and an affidavit of justification shall not be necessary.

Other surety or affidavit of justification not required.

(5) Notwithstanding anything in this section, any judge or any officer having jurisdiction in the matter, may in his discretion disallow any such bond on a motion to disallow it, and upon any evidence which may be deemed sufficient. 3-4 Geo. V. c. 19, s. 69.

Disallowance of bond on motion.

PHYSICAL EXAMINATION OF PARTIES.

Physical examination of party by medical practitioner.

70.—(1) In any action or proceeding for the recovery of damages or other compensation for or in respect of bodily injury sustained by any person, the court which, or the judge, or the person who by consent of parties, or otherwise, has power to fix the amount of such damages or compensation, may order that the person in respect of whose injury damages or compensation are sought shall submit himself to a physical examination by a duly qualified medical practitioner who is not a witness on either side and may make such order respecting the examination and the costs of it as may be deemed proper.

Medical practitioner to be selected by judge and may be a witness.

(2) The medical practitioner shall be selected by the court, judge, or person making the order, and may afterwards be a witness on the trial unless the court, judge or person before whom the action or proceeding is tried otherwise directs. 3-4 Geo. V. c. 19, s. 70.

TENDER OF AMENDS IN CASE OF TORTS.

Tender of amends in case of torts.

71. A person who has committed a wrong giving a cause of action for the recovery of damages to the person wronged may at any time before action tender amends; and the tender shall have the same effect as a tender in an action for the recovery of a debt. 3-4 Geo. V. c. 19, s. 71.

VESTING ORDERS.

Vesting order, effect of.

72. Where the Court has authority to order the execution of a deed, conveyance, transfer or assignment of any property, real or personal, the Court may by order vest such real or personal property in such person, and in such manner, and for such estates, as would be done by any such deed, conveyance, assignment or transfer if executed; and the order shall have the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise, for the same estate or interest, to the person in whom the same is so ordered to be vested, or in case of a chose in action, as if it had been actually assigned to such last mentioned person. 3-4 Geo. V. c. 19, s. 72.

JUDGMENTS FOR ALIMONY.

Judgment for alimony may be registered.

73.—(1) An order or judgment for alimony may be registered in any registry office in Ontario, and the registration shall, so long as the order or judgment remains in force, bind the estate and interest which the defendant has in any land in the registry division in which the registration is made, and operate thereon in the same manner and with the same effect as the registration of a charge by the defendant of a life annuity on his land.

(2) The order or judgment may also, on the application of the plaintiff, be registered as a charge against any lands of the defendant registered under *The Land Titles Act*.
Registration of order.
Rev. Stat.
c. 126.

3-4 Geo. V. c. 19, s. 73.

COSTS.

74.—(1) Subject to the express provisions of any statute, the costs of and incidental to all proceedings shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and to what extent the costs shall be paid.
Costs.

(2) Nothing herein shall deprive a trustee, mortgagee or other person of any right to costs out of a particular estate or fund.
Right of trustee or mortgagee preserved.

(3) Where an action or issue is tried by a jury, the costs shall follow the event, unless the Judge before whom the action or issue is tried in his discretion otherwise orders.
When costs to follow the event.

(4) Costs of proceedings before judicial officers, unless otherwise disposed of, shall be in their discretion subject to appeal. 3-4 Geo. V. c. 19, s. 74.
In proceedings before judicial officers.

PRACTICE AND PROCEDURE.

75.—(1) Subject as to appeals under *The Ontario Controverted Elections Act* to the provisions of that Act, and as to appeals and applications for a new trial to the Court under *The Criminal Code* to the provisions of that Act, and subject also to the Rules, the practice and procedure upon and as to appeals to a Divisional Court shall be that which on the 31st day of December, 1912, was applicable to appeals to a Divisional Court of the High Court.
Practice and procedure.

(2) Nothing in subsection 1 shall take away or affect any right of appeal to the Court of Appeal from a judgment, order or decision pronounced, made or given by a Divisional Court of the High Court which on the 31st day of December, 1912, any party had or was entitled to, whether by or without leave, but the appeal shall be to a Divisional Court of the Appellate Division.
Rights of appeal preserved.

(3) In all matters and proceedings which on the 31st day of December, 1912, had been fully heard by a Divisional Court of the High Court, and in which judgment had not been given, or having been given had not been signed, drawn up, passed, entered or otherwise perfected, judgment may be given, signed, drawn up, passed, entered or otherwise perfected in the name of the same court, and by the same judges and officers, and generally in the same manner as if such court had not been abolished, and for those purposes the court shall be deemed to continue to exist.
Judgment in matters heard before 31st December, 1912.

Matters
pending in
Divisional
Courts on
31st Decem-
ber, 1912.

(4) All matters and proceedings in a Divisional Court of the High Court pending on the 31st day of December, 1912, to which subsection 3 does not apply shall be deemed to be matters and proceedings in the Appellate Division and shall be dealt with in the manner, and the practice and procedure shall be as provided by subsection 1. 3-4 Geo. V. c. 19, s. 75.

OFFICES AND OFFICERS.

Officers.

76.—(1) There shall be the following officers of the Supreme Court:—

In Toronto:

- (a) An Official Guardian;
- (b) A Master in Chambers;
- (c) A Master in Ordinary;
- (d) A Registrar of the Appellate Division;
- (e) Two or more Registrars of the High Court Division, the senior of whom shall be called the Senior Registrar;
- (f) A Clerk of the Crown and Pleas;
- (g) An Accountant;
- (h) Two or more Taxing Officers;
- (i) An Assistant Registrar of the Appellate Division;
- (j) A Clerk of Records and Writs;
- (k) A Clerk in Chambers;
- (l) A Marshal and Clerk of Assize for the County of York;
- (m) A Clerk of the Process;
- (n) As many stenographic reporters as the Lieutenant-Governor in Council may deem necessary;
- (o) As many official referees as the Lieutenant-Governor in Council may deem necessary;
- (p) In addition to those who are *ex officio* special examiners, as many special examiners as the Judges of the Supreme Court may deem necessary and appoint;

*Out of Toronto:*Out of
Toronto.

(q) A deputy clerk of the Crown and Pleas, and a deputy registrar, if those offices are not consolidated, and a local registrar if they are consolidated, for every county except the County of York;

(r) One or more local masters for every county except the County of York, who shall also be *ex officio* referees of titles in their respective counties;

and the officers mentioned in this subsection, except the special examiners, shall be appointed by the Lieutenant-Governor in Council.

(2) The Lieutenant-Governor in Council may appoint such other officers and clerks as he may deem necessary for the proper despatch of business in the Supreme Court.

Other
officers
may be
appointed.

(3) Every person now holding any of the offices mentioned in subsection 1, and every officer and clerk employed in the office of any such officer shall continue to hold office during pleasure, and every officer and clerk hereafter appointed shall also hold office during pleasure.

Existing
officers to
continue.Tenure of
office.

(4) If the Lieutenant-Governor in Council deems it advisable so to do, he may dispense with any of the officers mentioned in subsection 1, or may amalgamate his office with any other office.

Officers may
be dispensed
with.

(5) Existing officers shall retain their present rank and seniority, and subject to subsection 6, their offices shall retain the names they now bear.

Existing
officers to
retain rank,
etc.

(6) The official names of any of the offices and officers may be changed, and the duties assigned to any officer may be regulated and changed by the Lieutenant-Governor in Council and, subject to any order in council, by the Rules.

Official
names may
be changed.

(7) Subject to any order made by the Lieutenant-Governor in Council, the duties to be performed in the Supreme Court or in either Division of it or in a Divisional Court or in Chambers, in connection with the business therein, other than those to be performed by the judges, shall be assigned to such officer as may be directed by the Rules and shall be performed by him.

Duties of
officers may
be pre-
scribed by
the Rules.

(8) Duties may be assigned to an officer in respect of business in either of the Divisions or in both of them, and every officer shall perform the duties assigned to him by the Rules, whether or not they appertain to the office which he holds. 3-4 Geo. V. c. 19, s. 76.

Duties in
either
Division
may be
assigned to
officers.

77.—(1) Every officer hereafter appointed shall, before entering upon the duties of his office, take and subscribe the following oath:—

Oath of
officers.

Form.

"I, A. B., of _____ solemnly swear that I will, according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfill the duties of the office of _____ without favour or affection, prejudice or partiality, to any person. So help me God."

Oath to be administered by a Judge in Court.

(2) The oath shall be administered by a Judge in Court.

Exception where inconvenient for officer to attend at Toronto.

(3) Where it is not convenient for a person appointed to an office to attend at Toronto to take the oath, it may be taken before the judge of the county court of the county in which the officer resides, or before a commissioner authorized to take affidavits in that county.

Oath to be transmitted to, and filed in Central Office.

(4) Where the oath is taken in accordance with subsection 3, the judge or commissioner before whom it is taken shall forthwith transmit the oath to and it shall be filed in the Central Office. 3-4 Geo. V. c. 19, s. 77.

OFFICERS PAID BY SALARY NOT TO TAKE FEES.

Officers paid by salary not to take fees.

78.—(1) Except where in this Act it is otherwise expressly provided, an officer who is paid by salary shall not take for his own benefit, directly or indirectly, any fee or emolument except the salary to which he is entitled, and the fees payable in respect of proceedings in his office shall be payable to the Crown.

(2) Subsection 1 shall not apply to the fees of—

Exceptions.

(a) A deputy clerk of the Crown and Pleas on an examination had before him as a special examiner or on a reference made to him as an official referee.

(b) A stenographic reporter for copies of shorthand notes of evidence. 3-4 Geo. V. c. 19, s. 78.

RETURN OF FEES.

Return of fees.

79.—(1) Every officer paid wholly or partly by fees, whether commuted or not, shall on or before the 15th day of January in every year, transmit to the Inspector of Legal Offices a just, true and faithful account, verified by his oath, of the amount of fees paid or payable to him in cash or in law stamps, in respect of his office during the next preceding calendar year, and such other particulars with reference to the business of his office as the Inspector may require.

Form of return may be prescribed.

(2) The Lieutenant-Governor in Council or the Minister having charge of the matter may require the return to state any particulars, or to be made in any form which may be deemed proper, and the return shall be made accordingly. 3-4 Geo. V. c. 19, s. 79.

WHERE OFFICES TO BE KEPT.

80. The officers in Toronto mentioned in section 76, except those mentioned in clauses (a), (n), (o) and (p), shall keep their offices at Osgoode Hall, in the City of Toronto. 3-4 Geo. V. c. 19, s. 80.

Certain officers in Toronto to keep their offices at Osgoode Hall.

81. Every local master shall keep his office in the county town of the county for which he is appointed. 3-4 Geo. V. c. 19, s. 81.

Local Master to keep office in county town.

82.—(1) Subject to subsection 2, every local registrar, every deputy clerk of the Crown and Pleas, and every deputy registrar shall, if proper accommodation is afforded to him there, keep his office in the court house of the county for which he is appointed, and until he can obtain such accommodation he shall keep his office in some convenient place in the county town.

Certain offices to be kept at court house.

(2) The local registrar at Sandwich may keep an office in some convenient place in the city of Windsor, subject to such arrangements as the council of the county of Essex may assent to, and the Lieutenant-Governor in Council may approve. 3-4 Geo. V. c. 19, s. 82.

Exception. (Essex).

OFFICE HOURS.

83. Except on holidays, and subject to the Rules as to office hours during vacations, the offices of the local registrars, deputy clerks of the Crown and Pleas and deputy registrars and those of the Supreme Court and of both divisions of it at Osgoode Hall, shall be kept open from 10 o'clock in the forenoon until 4 o'clock in the afternoon, except on Saturdays, when the offices shall be kept open until 1 o'clock in the afternoon. 3-4 Geo. V. c. 19, s. 83.

Office hours.

[As to Clerks of County Courts see *The County Courts Act*, s. 9, and as to registrars of Surrogate Courts see *Sur. Court Rule 30.*]

SECURITY FROM OFFICERS.

84.—(1) Every officer of the Supreme Court, if and when so required by the Lieutenant-Governor in Council, shall give security to His Majesty for the due performance of the duties of his office in such sum as the Lieutenant-Governor in Council may direct.

Officers to give security, if required.

(2) The neglect to give such security shall render the appointment of the officer void, but the forfeiture of office shall not affect any act done by him while he continues to act. 3-4 Geo. V. c. 19, s. 84.

Consequences of neglecting to do so.

SEALS OF OFFICERS OUT OF TORONTO.

Seals of
Local
Registrars,
Deputy
Registrars
and Deputy
Clerks of
the Crown
and Pleas.

85.—(1) In the offices of the local registrars, deputy registrars and deputy clerks of the Crown and Pleas, such seals shall be used as the Lieutenant-Governor in Council shall from time to time direct, and the same shall be impressed on every writ and other document issued out of such office; and every such writ and document, and every exemplification and copy thereof purporting to be sealed with such seal shall be received in evidence in all Courts without further proof thereof.

Seals of
Accountant
and Master
in Ordinary
and local
officers.

(2) Until other seals are authorized by the Lieutenant-Governor in Council, the seals now in use in the office of the Accountant and in the office of the Master in Ordinary or of any local officer of either of the Divisions shall be the proper seals of those officers respectively. 3-4 Geo. V. c. 19, s. 85.

OFFICIAL REFEREES.

Official
referees.

86.—(1) Subject to the Rules, judges of county courts, the Master in Ordinary, the Master in Chambers, the Clerk of the Crown and Pleas, Registrars, local masters, local registrars, deputy clerks of the Crown and Pleas, and deputy registrars shall be official referees for the trial of such questions as may be directed to be tried by an official referee.

Additional
referees.

(2) Where the business requires additional official referees, the Lieutenant-Governor in Council may appoint them.

Fees of
referees.

(3) Subject to subsection 4 of section 66 in the case of officers who are paid by salary, the fees on a reference or trial shall be paid in law stamps; other referees shall be paid in money. 3-4 Geo. V. c. 19, s. 86.

CERTAIN LOCAL MASTERS NOT TO PRACTISE.

Certain
Local
Masters,
not to
practise.

87.—(1) A local master whose gross income from his office of local master or of deputy registrar and local master is \$2,000 or upwards, and any other local master as to whom the Lieutenant-Governor in Council shall so direct, shall not, directly or indirectly, practise the profession of the law as counsel, or solicitor, or act as a notary public, or conveyancer, or do any manner of conveyancing, or prepare any paper or document to be used in any court.

Penalty.

(2) Every person who contravenes the provisions of subsection 1 shall incur a penalty of \$400.

Lieutenant-
Governor
in Council
may relieve
from prohibi-
tion of
subsection 1.

(3) This section shall not apply to a local master whom the Lieutenant-Governor in Council has relieved or may hereafter relieve from its prohibition, which the Lieutenant-Governor in Council shall have authority to do. 3-4 Geo. V. c. 19, s. 87.

VACANCY IN OFFICE OF LOCAL MASTER.

88. Where a vacancy occurs in the office of local master, the judge of the county court of the county shall be the local master until and unless another person is appointed local master, and if there are two judges, both of them shall be local masters until and unless one of them or some other person is appointed sole local master. 3-4 Geo. V. c. 19, s. 88.

Vacancy in
office of
Local
Master.

APPOINTMENT OF LOCAL MASTER PRO TEMPORE.

89. In case of the illness or absence of a local master or upon his request in writing, filed with the local registrar, a judge, or deputy judge of the county court of the county, after approval by the Lieutenant-Governor in Council, may act as such local master and while so acting shall have all the powers and may perform all the duties of such local master. 3-4 Geo. V. c. 19, s. 89.

When
Judge of
County Court
may act
for Local
Master.

DEPUTY REGISTRARS, EX OFFICIO.

90. Where a judge of the county court is the local master, the clerk of that court shall be the deputy registrar unless another person is appointed to that office. 3-4 Geo. V. c. 19, s. 90.

Deputy
Registrars.

CONSOLIDATION OF OFFICES OF DEPUTY CLERK OF CROWN AND PLEAS AND DEPUTY REGISTRAR.

91. The offices of the deputy clerk of the Crown and Pleas, and deputy registrar (not local master) may be consolidated as vacancies occur in either of them, and when they are held by the same person, he shall be styled local registrar. 3-4 Geo. V. c. 19, s. 91.

Local
Registrars.

LOCAL REGISTRARS, EX OFFICIO.

92. Unless another person is appointed, the clerk of the district court shall *ex officio* be local registrar for his district. 3-4 Geo. V. c. 19, s. 92.

Clerks of
District
Courts to
be Local
Registrars.

CLERKS OF COUNTY COURTS TO BE DEPUTY CLERKS OF CROWN AND PLEAS.

93. Except in the County of York, and unless another person is appointed, the clerk of the county court shall *ex officio* be deputy clerk of the Crown and Pleas for his county, unless the offices of deputy clerk and deputy registrar are consolidated under section 91. 3-4 Geo. V. c. 19, s. 93.

Deputy
Clerks of
the Crown
and Pleas.

SALARIES OF DEPUTY CLERKS OF THE CROWN AND PLEAS.

Salaries of
Deputy
Clerks of
the Crown
and Pleas.

94.—(1) Every deputy clerk of the Crown and Pleas shall be paid out of any money appropriated for that purpose by this Legislature a yearly salary of such amount not exceeding \$600 or less than \$100, as the Lieutenant-Governor in Council shall direct.

When maxi-
mum not to
apply.

(2) The maximum of \$600 shall not apply where the deputy clerk does not hold the office of registrar of the surrogate court. 3-4 Geo. V. c. 19, s. 94.

FEES OF OFFICERS ATTENDING SITTINGS.

Fees for
attending
sittings for
trial.

95.—(1) Every local registrar, deputy clerk of the Crown and Pleas, and deputy registrar, and every officer authorized to act as local registrar, deputy clerk of the Crown and Pleas, or deputy registrar, shall be entitled to be paid out of the Consolidated Revenue Fund \$4 for each day's attendance at non-jury as well as at jury sittings. 3-4 Geo. V. c. 19, s. 95.

STENOGRAPHIC REPORTERS.

Steno-
graphic
reporters.

96.—(1) The stenographic reporters shall be officers of the court to which they are appointed, and shall perform such other duties as may be assigned to them by the Lieutenant-Governor in Council or by the Rules.

Reporter's
oath.

(2) Every such reporter shall take and subscribe the following oath before a judge of the court to which he is appointed, and the oath shall be filed with the proper officer of that Court:—

Form.

"I (A. B.), solemnly and sincerely promise and swear that I will faithfully report the evidence and proceedings in each case in which I act as stenographic reporter. So help me God."

3-4 Geo. V. c. 19, s. 96.

Reporters
for County
and Surro-
gate Courts.

97. The Lieutenant-Governor in Council may appoint a stenographic reporter for any county court or surrogate court and the provisions of the next preceding section shall apply to a Stenographic Reporter so appointed. 3-4 Geo. V. c. 19, s. 97.

SPECIAL EXAMINERS.

Ex officio,
special
examiners.

98.—(1) Every local registrar, deputy clerk of the Crown and Pleas, deputy registrar, and clerk of the county court shall *ex officio* be a special examiner for the county for which he is appointed.

Appointment
of special
examiners.

(2) The Judges of the Supreme Court may appoint special examiners for the purpose of taking evidence of parties and witnesses, and a commission under the seal of the Court shall be issued to a special examiner so appointed.

(3) There shall be but four special examiners in Toronto, in addition to the officer or clerk at Osgoode Hall mentioned in subsection 4.

Number limited.

(4) No officer or clerk at Osgoode Hall who is in receipt of a salary as such officer or clerk from the Province shall act as a special examiner for fee or reward; but the fees payable in respect of any examination before him or for copies or certificates thereof or connected therewith shall be payable to the Crown, and not otherwise, and no such officer or clerk whose salary is so paid shall be eligible for appointment as a special examiner.

Salaried officers at Osgoode Hall not to take fees as special examiner for own use.

(5) Where a vacancy occurs in the office of special examiner there shall thereafter be but three special examiners in Toronto, in addition to such officer or clerk.

Number of special examiners.

(6) Where an examination is taken by a stenographer or other person who is not a special examiner, it shall be taken in the presence of the special examiner.

Examination to be taken in presence of special examiner.

(7) A special examiner shall not solicit or make request from any suitor, solicitor, or other person, or offer any inducement to have a special examination taken before him, nor shall any one do so on his behalf with his knowledge or assent, on pain of forfeiture of office.

Examinations not to be solicited.

(8) Where it appears to the Lieutenant-Governor in Council that a local registrar, a deputy clerk of the Crown and Pleas, a deputy registrar, or a clerk of a county court elsewhere than in Toronto, is infirm or ill, or is otherwise unable or unfit to act personally as special examiner, or if he is absent on leave, the Lieutenant-Governor in Council may appoint the stenographic reporter for the County Court, or some other person to act temporarily or otherwise as such special examiner in his stead. 3-4 Geo. V. c. 19, s. 98.

Appointment of special examiners, *pro tem*.

COMMUTATION OF FEES OF CERTAIN OFFICERS.

99.—(1) The Lieutenant-Governor in Council may commute the fees payable to a—

Commutation of fees of certain officers.

(a) local master, or local registrar, or deputy registrar, including his fees as an official referee;

(b) deputy clerk of the Crown and Pleas on references and examinations and other matters;
for a fixed annual sum, not exceeding the average income derived from such fees during the next preceding five years.

(2) An annual sum so fixed, and any order in council for payment of any such annual sum may be rescinded, and the amount may be increased or diminished, but in no case shall it exceed the average income or fees, as the case may be, during the next preceding five years. 3-4 Geo. V. c. 19, s. 99.

Amount of commutation may be changed.

Order in
Council as
to commu-
tations to
be laid
before
Assembly.

100.—(1) Every order in council determining any commutation allowance under the authority of this Act, shall be laid before the Assembly forthwith, if the Assembly is then in session, and if the Assembly is not then in session, within the first fifteen days after the opening of the next session.

Disapproval
by Assembly.

(2) If the Assembly at such session, or if the session does not continue for three weeks after the order in council is laid before the Assembly, then at the next ensuing session, disapproves by resolution of such order in council, either wholly, or so far as relates to any person named in it, the Order in Council, so far as so disapproved, shall have no effect from the time of the passing of the resolution. 3-4 Geo. V. c. 19, s. 100.

RETURNS BY CLERK OF PROCESS.

Clerk of
Process
to make
quarterly
returns.

101. The Clerk of the Process shall make to the Treasurer of Ontario quarterly returns verified by his affidavit, of all writs and process supplied by him to the local registrars, deputy clerks of the Crown and Pleas and deputy registrars to be issued by them. 3-4 Geo. V. c. 19, s. 101.

INSPECTOR OF LEGAL OFFICES.

Inspector
of Legal
Offices.

102. The Lieutenant-Governor in Council may appoint an officer to be called "The Inspector of Legal Offices," to inspect the offices of the Master-in-Ordinary and of the other officers of the Supreme Court and of both Divisions of it at Toronto, and the offices of the sheriffs, local masters, local registrars, deputy clerks of the Crown and Pleas, deputy registrars, Surrogate Clerk, registrars of the surrogate courts, clerks of the peace, crown attorneys and clerks of the county courts, and such other offices connected with the administration of justice as the Lieutenant-Governor in Council may direct. 3-4 Geo. V. c. 19, s. 104.

Duties of
Inspector.

103.—(1) In addition to any other duties assigned to him by any Act of this Legislature or which may be assigned to him by the Lieutenant-Governor in Council, the Inspector shall—

- (a) make a personal inspection of the offices mentioned in section 102 and of the books and court papers belonging to them;
- (b) see that proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a proper manner, at proper times and in proper form and order, and that the court papers and documents are properly classified and preserved;

- (c) ascertain that the duties of the officers are duly and efficiently performed;
- (d) see that proper costs and charges only are allowed or exacted;
- (e) ascertain whether uniformity of practice prevails in the offices; and
- (f) report upon all such matters to the Lieutenant-Governor.

(2) Where the Inspector has occasion to inquire into the conduct of any officer in relation to his official duties or acts, he may require such officer, or any other person to give evidence before him on oath; and for that purpose he shall have the same power to summon such officer or other person to attend as a witness, to enforce his attendance and to compel him to produce books and documents and to give evidence, as any court has in civil cases. Inquiries by Inspector.

(3) The officers shall, when and as often as required by the Inspector, produce for examination and inspection all books and documents which are required to be kept by them, and shall report to the Inspector all such matters relating to any cause or proceeding as the Inspector shall require. 3-4 Geo. V. c. 19, s. 105. Books, etc., to be produced for inspection.

[As to authority of Inspector to direct law stamps to be affixed to proceedings not properly stamped, see The Law Stamps Act, s. 12.]

OFFICIAL GUARDIAN.

104.—(1) No person shall be appointed Official Guardian unless he is a barrister at law and solicitor of Ontario of not less than 10 years standing. Qualification of Official Guardian.

(2) The Official Guardian shall be the guardian *ad litem* of infants and shall perform such other duties as may be assigned to him by the Rules. Duties.

(3) The same costs as are payable to counsel and solicitors shall be payable to the Official Guardian, but all costs paid to him by any party shall forthwith be paid into Court by the Official Guardian and shall be placed to the credit of an account to be entitled "Account of Official Guardian," and all costs payable to the Official Guardian out of any fund in Court shall be transferred to the credit of the same account. Costs payable to Official Guardian to be paid into Court.

(4) Where an estate is small, and in view of the amount at the credit of the Account of Official Guardian the amount or part of the amount payable out of the estate for the costs of the Official Guardian does not appear to be required to Dispensing with payment of costs out of small estates.

pay his salary and the disbursements of his office, the Court may direct that payment out of the estate of the whole or any part of such costs be dispensed with.

Remunera-
tion of
Official
Guardian.

(5) There shall be paid to the Official Guardian for all business done and all costs in respect of it over and above all disbursements, a fixed annual salary of such sum as, in view of the amount of the business done or to be done by him and the sum at the credit of the account, the Judges of the Supreme Court deem reasonable and the Lieutenant-Governor in Council approves.

Salary and
disburse-
ments to be
paid
monthly.

(6) The salary and disbursements shall be paid monthly out of the money at the credit of the account, and the surplus at the credit of the account shall be transferred to the Suitors Fee Fund Account.

Deficiency
to be paid
out of
Suitors
Fee Fund
Account.
Deputy
Official
Guardian.

(7) If in any year the amount at the credit of the account is insufficient to pay the salary and disbursements the deficiency shall be paid out of the Suitors Fee Fund Account.

(8) Subject to the approval of the Lieutenant-Governor in Council, the Official Guardian may appoint a deputy to act for him when he may be absent from Toronto, or ill, and such deputy shall have all the powers and shall perform all the duties of the Official Guardian during any such absence or illness.

Qualification
of Deputy.

(9) No person shall be appointed as such deputy unless he is a barrister at law and solicitor of Ontario of not less than 10 years standing.

Employ-
ment of
solicitor out
of Toronto.

(10) The Official Guardian may employ as agents, solicitors out of Toronto for the purpose of any proceeding being carried on out of Toronto, and a solicitor so appointed shall be entitled to the same costs for the work actually done by him as the Official Guardian would have been entitled to if the work had been done by him, and such costs shall be paid to the solicitor and shall be deemed to be a disbursement of the Official Guardian.

Half-
yearly
statement
of costs
received to
be made
and filed.

(11) The Official Guardian shall once in every six months file in the office of the Accountant a statement verified by his affidavit showing in detail all costs received by him as Official Guardian during the next preceding six months and the names of the actions and matters in which the same were received together with the date of receipt.

Official
Guardian
not to
practise if
Lieutenant-
Governor
in Council
so directs.

(12) If the Lieutenant-Governor in Council so directs, the Official Guardian shall not directly or indirectly practise the profession of the law as counsel or solicitor or act as a notary public or conveyancer or do any matter of conveyancing or prepare any paper or document to be used in any court of Ontario except in the discharge of his duties as Official Guardian or of a duty which may be assigned to him under the authority of this Act.

(13) For every contravention of the next preceding sub-section the Official Guardian shall incur a penalty of \$400. Penalty.

(14) Unless otherwise ordered by the Court or a Judge the Official Guardian shall not be required to give security for the costs of any proceeding. Official Guardian not to give security for costs.

(15) The Accountant shall on or before the 15th day of January in every year transmit to the Provincial Secretary a statement certified by him to be a true statement, showing the state of the Account of Official Guardian on the 31st day of the next preceding December. Return by Accountant as to state of account of Official Guardian.

(16) When a new Official Guardian is appointed he shall *ipso facto* become and be by virtue of his appointment guardian *ad litem* of all infants in the place and stead of his predecessor with the same rights, duties and powers, and the latter or his executors or administrators shall forthwith deliver to the new Official Guardian all letters, papers, documents and books in his or their possession or power relating to matters in which such predecessor acted as official or other guardian *ad litem* of infants, and the new Official Guardian shall forthwith notify all persons concerned of his appointment. 3-4 Geo. V. c. 19, s. 106. New Official Guardian.

ACCOUNTANT.

105.—(1) The Accountant of the Supreme Court shall be a corporation sole by the name of "The Accountant of the Supreme Court of Ontario," and as such corporation sole shall have perpetual succession and may sue and be sued and may plead and be impleaded in any of His Majesty's Courts. Accountant to be a corporation sole.

(2) All money, mortgages, stocks, securities and property now vested in the Accountant, as such corporation sole, shall continue to be so vested in him, and all money in Court and all securities in which money paid into Court is invested shall be vested in him as such corporation sole, subject to the provisions of this Act. Money, mortgages, etc., to be vested in Accountant.

(3) Where there is a vacancy in the office of Accountant, such officer or person as may be directed by the Rules to perform the duties of the office shall be deemed to be and shall have all the powers of the Accountant. Where there is no Accountant, officer designated by the Rules shall be the Accountant.

(4) The expenses of the Accountant's office including all salaries shall be the first charge on the income from the funds in Court, and the surplus income after payment of such interest on the money of suitors as by the Rules or otherwise is directed to be paid shall be transferred to the Suitors Fee Fund Account. 3-4 Geo. V. c. 19, s. 107. Expenses of Accountant's office.
Surplus to be paid to suitors fee fund.

INVESTMENT OF COURT FUNDS.

Finance
Committee
of Judges.

106.—(1) The Judges of the Supreme Court may delegate to a committee of themselves appointed for that purpose, to be called The Finance Committee, the control and management of the money in Court and the securities in which it is invested and the investment of such money.

Investment
of Court
funds.

(2) Money paid into Court shall be invested in the name of the Accountant, or if there is no Accountant, in the name of such officer as may be directed by the Rules, and may be invested in such of the securities in which a trustee may under *The Trustee Act* invest, as may from time to time be directed by the Judges of the Supreme Court or by the Finance Committee.

Rev. Stat.
c. 121.

Investment
in Pro-
vincial
Securities,
etc.

(3) The Lieutenant-Governor in Council may direct that any part of such money which is available for investment shall be invested in securities issued by the Province of Ontario or in securities the payment of which is guaranteed by it.

Debentures
invested in
not to be
open to
question.

(4) Where an investment in debentures of a municipal corporation is made, the validity of the debentures shall not thereafter be open to question but they shall be deemed to be valid.

Trust cor-
poration
may be
employed.

(5) The Judges of the Supreme Court or the Finance Committee may employ a trust company to make the investments of money paid into Court on such terms and conditions as may be agreed on. 3-4 Geo. V. c. 19, s. 108.

Money, etc.,
vested in
Accountant,
Guardian,
etc., to be
deemed to
be held in
trust for
Crown.

107. All money, securities, effects and real or personal property vested in or held by the Accountant or by the Official Guardian or by any one appointed to discharge the duties of either of them shall be deemed to be vested in them in trust for His Majesty, but may, nevertheless, be paid out, sold, disposed of, assigned, conveyed or dealt with in accordance with any statute or the Rules, or with any judgment, or order of Court, or Order of the Lieutenant-Governor in Council or otherwise as heretofore or as may be provided or directed by any such statute, rules, judgment, order, or Order-in-Council. 3-4 Geo. V. c. 19, s. 109.

SUITORS FEE FUND ACCOUNT.

Suitors
fee fund.

108. The Suitors Fee Fund Account shall be kept and managed as may from time to time be directed by the Judges of the Supreme Court or the Finance Committee and any Divisional Court or any Judge of the Supreme Court may apply so much of the money at the credit of the account as may be necessary for the protection of any infant or other person not *sui juris* or *non compos mentis*, on whose behalf proceedings may be had in the Court, or may be ordered

to be had in another court, and may also, from time to time, order to be paid, out of the money at the credit of the account, any sum required to make good a default in respect of any suitor's money or securities from any mistake, act or omission of any officer of the Court, but such payment shall not prejudice the right to require the officer or his sureties to make good the loss occasioned by the mistake, act or omission. 3-4 Geo. V. c. 19, s. 110.

Certain losses may be charged on suitors fee fund.

RULES OF COURT.

109.—(1) The Judges of the Supreme Court may at any time amend or repeal any of the Rules and may make any further or additional Rules for carrying this Act into effect, and in particular for—

Judges of Supreme Court may make rules.

- (a) regulating the sittings of the Divisional Courts and of the Judges of the High Court Division sitting in Court or in Chambers; Sittings.
- (b) regulating the pleading, practice, and procedure in the Supreme Court and the Divisions thereof and in the Divisional Courts, and in the county and surrogate Courts; Pleading, practice and procedure.
- (c) allowing service out of Ontario; Service out of Ontario.
- (d) prescribing the fees and charges of special examiners and stenographic reporters; Fees of special examiners and stenographic reporters.
- (e) fixing the vacations; Vacations.
- (f) empowering the Master in Chambers, or any officer sitting for him or in his stead or the judges of the county courts, other than a judge of the County Court of the County of York, or the local masters in respect of actions brought in their counties, to do any such thing, and to transact any such business, and to exercise any such authority and jurisdiction in respect of the same as by virtue of any statute or custom, or by the Rules, are or may be done, transacted or exercised by a Judge of the High Court Division sitting in Chambers, as shall be specified in any such rule, except in respect of matters relating to— Empowering Master in Chambers, etc., to transact business.
 - (i) the liberty of the subject; Exceptions.
 - (ii) appeals and applications in the nature of appeals;
 - (iii) proceedings under *The Lunacy Act*; Rev. Stat. c. 68.
 - (iv) applications for advice under *The Trustee Act*; Rev. Stat. c. 121.

- (v) matters affecting the custody of children;
- (vi) proceedings enabling infants to make binding settlements of their real and personal property on marriage;

Regulating practice and procedure, duties of officers, costs, etc.

- (g) generally, for regulating any matters relating to the practice and procedure of the courts mentioned in clause (b), or to the duties of the officers thereof, or to the costs of proceedings therein; and every other matter deemed expedient for the better attaining the ends of justice, advancing the remedies of suitors, and carrying into effect the provisions of this Act and of all other Acts respecting such courts;

Fees payable to the Crown.

- (h) subject to the approval of the Lieutenant-Governor in Council for making rules from time to time regulating all fees payable to the Crown in respect of proceedings in any Court.

Provisions of statutes as to practice or procedure may be modified.

- (2) Where any provisions in respect of the practice or procedure of any court, the jurisdiction of which is vested in the Supreme Court, are contained in any statute Rules may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to such court unless, in the case of an Act hereafter passed, that power is expressly excluded.

Exception.

Provisions as to payment into or out of Court of money, etc.

- (3) Any provisions relating to the payment, transfer or deposit into, or in, or out of any court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure. 3-4 Geo. V. c. 19, s. 111.

Lieutenant-Governor in Council may authorize certain Judges and others to make rules.

- 110.**—(1) The Lieutenant-Governor in Council may from time to time authorize the Chief Justices, including the Chancellor, if any, and any one or more of the other Judges of the Supreme Court and the Treasurer of the Law Society of Upper Canada and any two barristers-at-law of Ontario to make Rules under this Act; and every appointment so made shall continue for the time specified in the order in council.

Effect of rules so made.

- (2) The persons so appointed, or any three of them, may make such rules, and they shall have the same effect as if made under section 109. 3-4 Geo. V. c. 19, s. 112.

COUNCIL OF JUDGES.

Council of Judges.

- 111.**—(1) A Council of the Judges of the Supreme Court, of which due notice shall be given to all of them, shall assemble once at least in every year, on such day as shall be fixed by the Lieutenant-Governor in Council, for the purpose of considering the operation of this Act and of the

Rules, and the working of the offices and the arrangements relative to the duties of the officers of the Court, and of enquiring and examining into any defects which may appear to exist in the system of procedure or the administration of justice in the Supreme Court or in any other court, or by any other authority.

Purposes for which Council to be held.

(2) The Council shall report to the Lieutenant-Governor what amendments or alterations, if any, it would be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provision, if any, which cannot be carried into effect without legislative authority it would be expedient to make for the better administration of justice.

Council to report to Lieutenant-Governor.

(3) An extraordinary council for the purposes mentioned in subsection 1 may also at any time be convened by the Lieutenant-Governor in Council. 3-4 Geo. V. c. 19, s. 113.

Extraordinary Councils.

DELEGATION OF POWERS OF JUDGES.

112.—(1) Where by this or any other Act any power or authority is conferred upon the Judges of the Supreme Court or upon the Judges of the High Court Division as a body they may respectively delegate such power or authority to a committee of themselves and when it is exercised by the committee the acts done by the committee shall have the same effect as if they had been done by the body by which the committee was appointed.

Delegation of powers of Judges.

(2) The presence of a majority of the members of the committee shall be necessary to constitute a quorum for the transaction of business.

Majority to be a quorum.

(3) Subsection 1 shall not apply to the making of Rules under the powers conferred by section 109 or to a Council of the Judges provided for by section 111. 3-4 Geo. V. c. 19, s. 114.

Application of subs. 1.

QUORUM OF MEETINGS OF JUDGES.

113. Where by this Act any power is conferred on the judges of the Supreme Court or of the High Court Division the power may be exercised at a meeting duly called at which in the case of the Supreme Court at least seven of the judges are present, and in the case of the High Court Division at least five of the judges are present. 3-4 Geo. V. c. 19, s. 115.

Quorum of meetings of Judges.

LOCAL JUDGES OF THE HIGH COURT DIVISION.

114. Except in the County of York, every judge of a county court shall be a Judge of the High Court Division for the purposes of his jurisdiction in actions in the Supreme Court; and in the exercise of such jurisdiction may be

County Court Judges to be local Judges of H.C.D.

styled a Local Judge of the Supreme Court, and shall, in all causes and actions in the Supreme Court, have, subject to the Rules, power and authority to do and perform all such acts and transact all such business in respect to matters and causes in or before the High Court Division as he is or may be by statute or the Rules empowered to do and perform. 3-4 Geo. V. c. 19, s. 116.

SHERIFFS, ETC.

Sheriffs,
Gaolers,
etc., to obey
orders of
the Court.

115. Sheriffs, deputy sheriffs, gaolers, constables and other peace officers, shall aid, assist and obey the Court and the Judges thereof in the exercise of the jurisdiction conferred by this Act, and otherwise, whenever by the Rules or by the order of the Court or of a Judge required so to do. 3-4 Geo. V. c. 19, s. 117.

GAOLS.

Gaols to be
prisons of
the Court.

116. All gaols in Ontario shall be prisons of the Court. 3-4 Geo. V. c. 19, s. 118.

OATHS AND AFFIDAVITS.

Administra-
tion of
oaths.

117. Every officer of the Supreme Court shall, for the purposes of any proceeding directed by a Judge of the Court or by a Divisional Court to be taken before him, have power to administer oaths, to take affidavits, and to examine parties and witnesses as the Court or Judge may direct. 3-4 Geo. V. c. 19, s. 119.

WITNESS FEES.

Fees of
certain
officers
producing
documents.

118. A public official or other witness subpoenaed or called upon to produce before any court or other tribunal any public or other document shall not be entitled to more than ordinary witness fees, unless the court or other tribunal otherwise orders. 3-4 Geo. V. c. 19, s. 120.

PROVISIONS APPLICABLE TO COUNTY COURTS.

Certain
sections to
apply to
County
Courts.

119. In addition to the provisions of this Act which are expressly made applicable to all courts or county courts or are otherwise by their terms so applicable, sections 24, 32, 34, 36, 50 to 52, 58 to 62, 71, 72, 74, 115 and 116 shall *mutatis mutandis* apply to the county courts. 3-4 Geo. V. c. 19, s. 121.

COMMISSIONS FOR HOLDING SITTINGS, ETC.

Power to
issue Com-
missions
not to be
affected.

120. This Act shall not affect the power to issue commissions for the discharge of civil or criminal business on circuit or otherwise; or the authority of a judge or a retired

judge of any of the superior courts, or a judge of a county court, or one of His Majesty's Counsel learned in the law, to preside without any commission at any sittings for the trial of civil causes, matters and issues or for the trial of criminal matters and proceedings; and any such judge or counsel shall have the same authority to preside at and to hold any such sittings as a Judge of the High Court Division; and when so presiding with or without a commission, or when holding any such sittings, shall be deemed to constitute the court. 3-4 Geo. V. c. 19, s. 122.

ACCESS TO CERTAIN BOOKS.

121.—(1) Every person shall have access to and be entitled to inspect the books of the Supreme Court and of the county courts, containing records or entries of the writs issued, judgments entered, and chattel mortgages and bills of sale filed; and no person desiring such access or inspection shall be required, as a condition of his right thereto, to furnish the names of the parties or the style of the causes or matters in respect of which such access or inspection is sought.

All books in which writs, judgments, etc., are entered to be open to inspection.

(2) Every officer having the charge or custody of any such book shall upon request produce for inspection any writ of summons or copy thereof so issued, and any judgment roll, or chattel mortgage, or bill of sale so filed in his office, or of which records or entries are, by law, required to be kept in such book.

Production of writs of summons, etc.

(3) The fees payable in respect of such inspection shall be 25 cents for a general search, and 10 cents for each writ of summons, judgment roll, chattel mortgage or bill of sale inspected, and 10 cents per folio shall also be payable for all extracts, whether made by the person making the search or by the officer. 3-4 Geo. V. c. 19, s. 123.

Fees for inspection.

PLEADINGS TO BE IN ENGLISH.

122. Writs, pleadings and proceedings in all courts shall be in the English language only, but the proper or known names of writs or other process, or technical words, may be in the same language as has been commonly used. R.S.O. 1897, c. 324, s. 1.

Writs, pleadings and proceedings to be in English.

DEMISE OF CROWN.

123. No action or other proceeding in any court shall be discontinued or determined by reason of the demise of the Crown, but the same shall be proceeded with as if such demise had not happened. R.S.O. 1897, c. 324, s. 2.

Demise of Crown not to affect pending proceedings.

SERVICE OF PROCESS ON THE LORD'S DAY.

Service of process on the Lord's day (exception) void.

Persons serving same liable to action.

124. No person upon the Lord's day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order or judgment, except in cases of treason, felony, or breach of the peace, and the service of every such writ, process, warrant, order or judgment on the Lord's Day shall be void, and the person so serving or executing the same shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he had done the same without any writ, process, warrant, order or judgment. R.S.O. 1897, c. 324, s. 3.

ACTIONS ON BONDS.

In actions on bonds, etc., plaintiff may assign as many breaches as he pleases.

Damages may be assessed.

125.—(1) In an action commenced or prosecuted in any court upon a bond for non-performance of any covenant or agreement in any indenture, deed or writing the plaintiff may assign as many breaches as he thinks fit, and, upon trial of such action, not only such damages and costs as have heretofore been usually assessed shall be assessed, but also damages for such of the breaches so assigned as the plaintiff upon the trial of the issues shall prove, and the like judgment shall be entered as heretofore in such action.

In what case if judgment for plaintiff, he may suggest as many breaches as he pleases.

Defendant paying damages and costs, execution may be stayed;

(2) If judgment is given for the plaintiff by confession or default he may suggest as many breaches of the covenants and agreements as he thinks fit, and the damages that he shall have sustained thereby shall be assessed; and if the defendant after such judgment entered, and before any execution executed, pays into the court in which the action is brought to the use of the plaintiff such damages so to be assessed by reason of all or any of the breaches of such covenants or agreements, together with the costs of suit, a stay of execution on the judgment shall be entered upon record.

Judgment to remain to answer or further breach

(3) If, by reason of any execution executed the plaintiff or his executors or administrators are fully paid or satisfied all such damages so to be assessed, together with his or their costs of suit, and all reasonable charges and expenses for executing the execution the body, land or goods of the defendant shall be thereupon forthwith discharged from the execution, which shall likewise be entered upon record; but such judgment shall, nevertheless, remain, continue and be as a further security to answer to the plaintiff and his executors or administrators such damages as shall or may be sustained for further breach of any covenant or agreement in the same indenture, deed or writing contained upon which the plaintiff may apply to the court in which judgment is entered for leave to issue execution upon the judgment against the defendant, or his executors or administrators, suggesting other breaches of the covenants or agreements, and to call

and plaintiff may apply to issue execution against defendant,

upon him or them to show cause why execution shall not be awarded upon the judgment, upon which the court shall make such order as may be deemed just.

(4) Upon payment or satisfaction of such future damages, and so *toties quoties*, costs and charges all further proceedings on the judgment are again to be stayed, and so *toties quoties*, and the defendant, his body, land or goods shall be discharged out of execution. R.S.O. 1897, c. 324, s. 4.

SET OFF.

126. Where there are mutual debts between the plaintiff and defendant, or, if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party one debt may be set against the other. R.S.O. 1897, c. 324, s. 5.

127.—(1) Mutual debts may be set against each other, notwithstanding that such debts are deemed in law to be of a different nature, except where either of the debts shall accrue by reason of a penalty contained in any bond or specialty. Mutual debts may be set off although one accrues by reason of penalty.

(2) Where either the debt for which the action is brought, or the debt intended to be set against the same, has accrued by reason of any such penalty the debt intended to be set off shall be pleaded, and it shall be shown by the pleading how much is truly and justly due on either side; and if the plaintiff recovers in any such action judgment shall be entered for no more than shall appear to be truly and justly due to the plaintiff after one debt being set against the other. R.S.O. 1897, c. 324, s. 6. Judgment only for balance due after set off.

128. If, upon a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff the defendant shall be entitled to judgment for the balance remaining due to him. R.S.O. 1897, c. 324, s. 7. Defendant to be entitled to judgment for balance due after set off.

PAYMENT POST DIEM.

129. Where an action is brought upon any bill, or where action is brought upon any judgment, if the defendant has paid the money due upon such bill or judgment such payment may be pleaded in the action, and where an action is brought upon a bond which has a condition or defeazance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors or administrators have, before the action brought, paid to the obligee, his executors or administrators the principal and interest due by the condition or defeazance of such bond, though such payment was not made strictly according to the condition or defeazance, yet it may nevertheless be pleaded Pl-a of payment in bar in action of debt, etc.

in such action, and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeazance and had been so pleaded. R.S.O. 1897, c. 324, s. 8.

Principal, interest, and costs brought into court pending action upon bond.

130. If, at any time pending an action upon any bond with a penalty, the defendant brings into the court all the principal money and interest due on such bond, and also all such costs as have been expended in any suit upon such bond, the money so brought in shall be deemed and taken to be in full satisfaction and discharge of the bond, and the court may give judgment to discharge every such defendant of and from the same accordingly. R.S.O. 1897, c. 324, s. 9.

ACCOUNT BY JOINT-TENANTS.

Proviso for actions of account by and between joint tenants as bailiffs, etc.

131. Actions of account shall and may* be brought and maintained against the executors and administrators of a guardian, bailiff and receiver, and also by one joint-tenant and tenant in common, his executors and administrators, against the other as bailiff for receiving more than comes to his just share or proportion, and against the executor and administrator of such joint-tenant or tenant in common. R.S.O. 1897, c. 324, s. 10.

RECORDS OF COURT.

Persons entitled to search and to copies of records of courts.

132. A person affected by any record in any court, whether it concerns the King or other person, shall be entitled, upon payment of the proper fee, to search and examine the same and to have an exemplification or a certified copy thereof made, and delivered to him by the proper officer. R.S.O. 1897, c. 324, s. 11.

PERPETUATING TESTIMONY.

Actions to perpetuate testimony may be brought by persons claiming offices, titles, etc., contingent on future events.

133. Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any office or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, shall be entitled to maintain an action in the Supreme Court to perpetuate any testimony which may be material for establishing such claim or right; and all laws, rules and regulations, not contrary to the provisions of this section, in force or in use in suits to perpetuate testimony, or respecting depositions taken in such actions in making such depositions, shall be in force and used and applied in all suits instituted under the authority of this section and in respect to depositions taken in such action. R.S.O. 1897, c. 324, s. 14.

134. In all actions which may be so instituted under the authority of section 133 touching any office, or any other matter or thing in which His Majesty may have any estate or interest, it shall be lawful to make the Attorney-General a party defendant thereto; and in all proceedings in which the depositions taken in any such action in which the Attorney-General was so made a defendant may be offered in evidence, such depositions may be admissible notwithstanding any objection to such depositions upon the ground that His Majesty was not a party to the action in which such depositions were taken. R.S.O. 1897, c. 324, s. 15.

Attorney-General to be party defendant in all such actions in which the King may have any estate or interest.

SPECIAL CASE—INDEMNITY TO PERSONS ACTING UNDER
JUDGMENT ON.

135. Any executor, administrator, trustee or other person making any payment or doing any act in conformity with the declaration contained in any judgment made upon a special case shall in all respects be as fully and effectually protected and indemnified by such declaration as if such payment had been made or act done under or in pursuance of the express order of the court made in a suit between the same parties instituted by writ of summons, save only as to any right or claim of any person in respect of matters not determined by such declaration. R.S.O. 1897, c. 324, s. 16.

Protection to be afforded to trustees by declaration.

136. The filing of a special case shall be taken to be a *lis pendens*. R.S.O. 1897, c. 324, s. 17.

Special case to be a *lis pendens*.

CONTEMPT.

137.—(1) When any person has been directed by any judgment or order to execute any deed or other instrument, or make a surrender or transfer, and has refused or neglected to execute such deed, or instrument, or make, such surrender or transfer, and has been committed to prison under process for such contempt, or, being confined in prison for any other cause, has been charged with or detained under process for such contempt, and remains in such prison, the court may, upon affidavit that such person has, after the expiration of fourteen days from the time of his being committed under, or charged with, or detained under such process, again refused to execute such deed or instrument, or make such surrender or transfer, order or appoint an officer of the court to execute such deed or other instrument, or to make such surrender or transfer for and in the name of such person.

Court may appoint person to execute instrument for person in contempt.

(2) The execution of such deed or other instrument, and the surrender or transfer in his name made by such officer, shall in all respects have the same force and validity as if the same had been executed or made by the party himself.

Effect of instrument.

(3) Within ten days after the execution or making of any such deed or other instrument, or surrender or transfer, notice thereof shall be given by the adverse solicitor to the

Notice to be given.

party in whose name the same is executed or made; and such party, as soon as the deed or other instrument, surrender or transfer is executed or made, shall be considered as having cleared his contempt, except as far as regards the payment of the costs of the contempt, and shall be entitled to be discharged from custody; and the court shall make such order as shall be deemed just touching the payment of the costs of or attending any such deed, surrender, instrument or transfer. R.S.O. 1897, c. 324, s. 18.

Power of
sequestrator
in cases of
contempt.

138.—(1) Where a person is committed for a contempt in not delivering to any person, or depositing in court or elsewhere, as by any order may be directed, books, papers or any other articles or things, any sequestrator appointed under any commission of sequestration shall have the same power to seize and take such books, papers, writings or other articles or things, being in the custody or power of the person against whom the sequestration issues, as he would have over his own property; and thereupon such articles or things so seized and taken shall be dealt with by the court as shall be deemed just.

Power of Court
to discharge.

(2) After such seizure the court may, upon the application of the prisoner or of any other person in the cause or matter, or upon any report, make such order for the discharge of the prisoner upon such terms as to costs and otherwise as the court may deem proper. R.S.O. 1897, c. 324, s. 19.

Court may
compulsorily
discharge
prisoners
confined for
contempt.

139. Where any person committed for a contempt is entitled to his discharge upon applying to the court, but omits to make such application, the court may, upon any such report, compulsorily discharge such person from the contempt and from custody, and pay the costs of the contempt out of any funds belonging to him over which the court may have power, or make them costs in the cause as against him. R.S.O. 1897, c. 324, s. 20.

CHARGING ORDERS ON STOCKS, ETC.

Stock and
shares in
public funds,
and public
companies,
belonging to
the debtor,
and standing
in his own
name, to be
charged by
order of a
Judge.

140. If a person against whom a judgment has been entered up in any of His Majesty's Courts in Ontario, has any Government stock, funds or annuities, or any stock or shares of or in a public company in Ontario, whether incorporated or not, standing in his name in his own right, or in the name of any person in trust for him, a judge of the Supreme Court, on the application of any judgment creditor, may order that such stock, funds, annuities, or shares or such of them or such part thereof respectively as he shall think fit shall stand charged with the payment of the amount for which judgment has been so recovered, and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge

had been made in his favour by the judgment debtor; but no proceedings shall be taken to have the benefit of such charge until after the expiration of six months from the date of such order. R.S.O. 1897, c. 324, s. 21.

141.—(1) Every such order shall be made in the first instance *ex parte* and without any notice to the judgment debtor, and shall be an order to show cause only; and such order, if any Government stock, funds or annuities standing in the name of the judgment debtor in his own right or in the name of any person in trust for him are to be affected, shall restrain any transfer thereof being made in the meantime and until such order has been made absolute or discharged; and if any stock or shares of or in any public company standing in the name of the judgment debtor in his own right or in the name of any person in trust for him are to be affected by any such order shall in like manner restrain such public company from permitting a transfer thereof.

Order of Judge to be made in the first instance *ex parte*, and on notice to the bank or company to operate as an

(2) If, after notice of such order to the person to be restrained thereby, or, in case of corporations, to any authorized agent of such corporation, and before the same order is discharged or made absolute, such corporation or person permits any such transfer to be made, the corporation or person so permitting such transfer shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor.

Liability of persons disregarding order.

(3) Unless the judgment debtor, within a time to be mentioned in such order, shows to a Judge sufficient cause to the contrary the order shall after proof of notice thereof to the judgment debtor, his solicitor or agent be made absolute.

When order absolute.

(4) Any such Judge, upon the application of the judgment debtor or any person interested, may discharge or vary such order and award such costs upon such application as he may think fit. R.S.O. 1897, c. 324, s. 22.

Varying or discharging orders.

142.—(1) Sections 140 and 141 shall extend to the interest of a judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent as well in any such stocks, funds, annuities or shares, as also in the dividends, interest or annual produce of any such stocks, funds, annuities or shares.

Provisions as to property of judgment debtors defined and extended.

(2) Where any such judgment debtor has any estate, right, title or interest, vested or contingent, in possession, remainder, or reversion in or to stocks, funds, annuities or shares standing in the name of the Accountant of the Supreme Court or in or to the dividends, interest or annual produce thereof, such Judge may make any order as to such stock,

Order affecting funds in Court.

funds, annuities or shares, or the interest, dividends or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor.

Effect of such order.

(3) No order of any Judge as to any stock, funds, annuities or shares standing in the name of the Accountant, or as to the interest, dividends or annual produce thereof, shall prevent any incorporated bank or any public company from permitting any transfer of such stocks, funds, annuities or shares, or payment of the interest dividends or annual produce thereof, in such manner as the Supreme Court may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities or shares, or the interest, dividends, or annual produce thereof, in favour of the judgment creditor with the amount of the sum mentioned in any such order. R.S.O. 1897, c. 324, s. 23.

PENAL ACTIONS.

In penal action if prior judgment set up, plaintiff may reply fraud.

143.—(1) In any penal action brought in good faith in which the defendant sets up a prior judgment the plaintiff may reply in avoidance of such judgment that such prior judgment was had by covin or collusion; and no release by any person before or after action for a penalty shall be a ground for staying such action.

Exception.

(2) No plaintiff in any such action shall be permitted to set up by way of reply, or otherwise, any such charge of covin or collusion, where the merits of the matter in question in the action, or a like charge of covin or collusion have been once tried and found either for or against the plaintiff. R.S.O. 1897, c. 324, s. 27.

Informer must be *sui juris*.

144. No person shall sue as a common informer in a penal action unless he is *sui juris*. R.S.O. 1897, c. 324, s. 28.

Compounding penal action.

145. No penal action brought by a common informer shall be compounded without the leave of the court. R.S.O. 1897, c. 324, s. 29.

QUO WARRANTO PROCEEDINGS.

Quo warranto, writ of, super-seded, in certain cases,—proceedings in lieu of.

146.—(1) Except in the cases mentioned in sections 149 and 150 all proceedings against any person who unlawfully claims or usurps, or is alleged unlawfully to claim or to usurp any office, franchise or liberty, or who has forfeited or is alleged to have forfeited any franchise, by reason of non-user or mis-user thereof, which have heretofore been instituted or taken by writ of *quo warranto*, or by information in the nature of a writ of *quo warranto*, hereafter shall be instituted and taken, where the proceeding is by the Attorney-General *ex officio*, by notice of motion calling on the person against whom the proceeding is taken to show cause why he unlawfully exercises or usurps such office, franchise or liberty. R.S.O. 1897, c. 324, s. 31.

Motion, or order *nisi*.

(2) Where the proceeding is at the instance of a relator it shall be taken in the name of His Majesty on the relation of such person, and such person shall before serving the notice of motion give security for the due and effectual prosecution thereof in like manner as nearly as may be and in the like amount as is, according to the practice of the Supreme Court, required to be given on an application to quash a conviction or order made by a Justice of the Peace, or in such manner and amount as the court may direct. R.S.O. 1897, c. 324, s. 32.

Where relator named, proceedings how framed.

Relator to give security.

147. The court may direct an issue for the trial of the matters in question on any such application, and may grant an injunction or a mandatory order in aid of the proceedings, or for the purpose of enforcing the judgment or order which shall be pronounced thereon. R.S.O. 1897, c. 324, s. 33.

Issue may be directed, or injunction, etc., granted.

148. The practice and procedure, including the right of appeal, shall be, in all other respects, in accordance with the ordinary practice and procedure of the Supreme Court. R.S.O. 1897, c. 324, s. 34.

Practice, and appeals.

149. Where it is intended to call in question the right of any person claiming to be a municipal officer, or an officer of a school corporation, to the office which he claims to hold, exercise or occupy as such officer, or the right of a member of any school board or school corporation to have, hold or enjoy any office, either as a member of such board or corporation or otherwise under the school laws of Ontario, and the provisions of section 150 do not apply to the trial and determination of such question, the matter shall be tried and determined by the judge of the county court of the county in which the duties of the office are to be performed, in a summary manner, and the proceedings shall be the same, as nearly as may be, as those provided for trying and determining a complaint respecting the validity or mode of conducting the elections of school trustees in an urban municipality, excepting that such Judge shall have the same power to award costs to either party to the proceedings as he would have if the same were a proceeding in the County Court. R.S.O. 1897, c. 324, s. 35.

Municipal and school officers.

150. Nothing in the next preceding section shall apply to or affect the proceedings in cases for which special provision is made by the municipal or school laws of Ontario, but in all such cases the proceedings shall be instituted and taken in the manner provided by those Acts, and not otherwise. R.S.O. 1897, c. 324, s. 36.

Where other special statutory provision, this Act not to apply.

CERTAIN PRACTICE AND PROCEDURE NOT AFFECTED.

151. Nothing in this Act shall affect the practice or procedure in criminal matters, or matters connected with Dominion controverted elections. 3-4 Geo. V. c. 19, s. 124.

Act not to apply to criminal matters or Dominion controverted elections.

CHAPTER 57.

An Act respecting the Judges of the Supreme Court
of Ontario.

HIS MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Ontario,
enacts as follows:—

Short title.

1. This Act may be cited as *The Extra Judicial Services Act*. 10 Edw. VII. c. 29, s. 1.

Annual
compensation.

2. Every Judge of the Supreme Court shall be paid out of the Consolidated Revenue Fund the annual sum of one thousand dollars, payable quarterly, as compensation for the services which he is called on to render by any Act of this Legislature in addition to his ordinary duties. 10 Edw. VII. c. 29, s. 2.

CHAPTER 58.

An Act respecting County and District Judges and Local Courts.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The County Judges Act*, Short title
9 Edw. VII. c. 29, s. 1.

JUDGES AND JUNIOR JUDGES.

2. The Judges of the several County and District Courts Tenure of office. now holding office, as well as the Judges hereafter to be appointed, shall hold their offices during good behaviour, but shall be subject to be removed by the Lieutenant-Governor Removal. R.S.C. c. 138, s. 28. for inability, incapacity or misbehaviour, established to the satisfaction of the Lieutenant-Governor in Council. 9 Edw. VII. c. 29, s. 2.

3. The person to be appointed to be the Judge or Junior Qualification. Judge of a County or District Court shall be a Barrister of at least seven years' standing at the Bar of Ontario. 9 Edw. VII. c. 29, s. 3.

4. Unless otherwise expressed in the commission, where Style. more than one Judge of a County or District Court is appointed for a county or district, the Judge whose commission has priority of date shall be styled "The Judge of the County or District Court of " (as the case may be), and the other Judge of the same Court shall be styled "The Junior Judge of the County or District Court of " (as the case may be). 9 Edw. VII. c. 29, s. 4.

5.—(1) A Junior Judge may be appointed for a county or district the population of which exceeds 80,000. Appointment of Junior Judges.

(2) The recital in any commission heretofore or hereafter issued for the appointment of a Junior Judge that the population of the county or district for which he is appointed exceeds 80,000 shall be conclusive and shall not be open to question in any proceeding whatever. Presumption as to population.

(3) A Junior Judge may be appointed for a county in Certain counties and districts. which a city is situate and for which county a Junior Judge was appointed prior to the 13th day of April, 1897, and for

any of the Counties of Grey, Lincoln, Renfrew, Leeds and Grenville, Stormont, Dundas and Glengarry, Prescott and Russell, Northumberland and Durham, Ontario, Bruce, Simcoe, Huron, Lambton and Victoria, including Haliburton, and for the Provisional Judicial Districts of Algoma, Nipissing and Thunder Bay. 9 Edw. VII. c. 29, s. 5; 2 Geo. V. c. 19.

Powers of
Junior Judges.

6. Where any power or authority is, by this Act or otherwise, conferred upon or may be exercised by the Judge of a County or District Court, whether with reference to the holding of any of the courts of the county or district which he may hold, or to the business of any of such Courts, or to any other matter or thing over which he has jurisdiction, the like power and authority shall be possessed and may be exercised by a Junior Judge, subject to the general regulation and supervision of the Judge. 9 Edw. VII. c. 29, s. 6.

County of
York.

7. A second junior judge and a third junior judge may be appointed for the County of York, who shall be called respectively the Second Junior Judge and the Third Junior Judge of the County Court of the County of York. 9 Edw. VII. c. 29, s. 7.

Residence
in county.

8. Every Judge and Junior Judge of a County or District Court shall reside within the county or district for which he is appointed, unless otherwise provided by Order in Council. 9 Edw. VII. c. 29, s. 8; 1 Geo. V. c. 17, s. 54.

Not to practise.

9. A Judge or Junior Judge shall not, directly or indirectly, practise as Counsel or Solicitor or act as a Notary Public or Conveyancer under the penalty of forfeiture of office and the further penalty of \$400. 9 Edw. VII. c. 29, s. 9.

Penalty.

DEPUTY JUDGES.

Appointment
of Deputy
Judge.

10.—(1) A Barrister of at least three years' standing at the Bar of Ontario may be appointed to be Deputy Judge for any county or district.

Idem.

(2) The appointment may be made notwithstanding that the office of Judge is vacant by death, or resignation, or that the Judge is ill or absent at the time of the appointment. 9 Edw. VII. c. 29, s. 10.

Tenure of office
and powers.

11. A Deputy Judge shall hold office during pleasure, and in case of the death, illness or absence of the Judge, shall have authority to perform in the place of the Judge, in the county or district for which he is appointed, all the duties of and incident to the office of the Judge, and all acts required or allowed to be done by the Judge under this or any other Act, unless therein otherwise expressly provided. 9 Edw. VII. c. 29, s. 11.

12. Nothing herein contained shall prevent a Deputy Judge from practising the profession of the law. 9 Edw. VII. c. 29, s. 12. ^{Right to practise.}

OATH OF OFFICE.

13. Every Judge, Junior Judge and Deputy Judge, before entering upon the duties of his office, shall take and subscribe the following oath before some person appointed by the Lieutenant-Governor to administer the same, that is to say: ^{Oath of office.}

"I, _____, do swear that I will (*in the case of a Deputy Judge add the words as occasion may require,*) truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of Judge of the County or District Court of the County or District of _____, (*as the case may be*): So help me God."

9 Edw. VII. c. 29, s. 13.

DUTIES AND POWERS OF JUDGES.

14.—(1) At any sittings of the County or District Court held at the same time as the sittings of the Court of General Sessions of the Peace, or of a Division Court in any county or district, or of any two of the Courts at the same time, either the Judge or the Junior Judge, or both of them, may, if the Judge thinks fit, preside in any of such Courts, or each of them in one of such Courts at the same time, so that two of the Courts may sit and the business therein be proceeded with simultaneously. ^{Power to preside together or separately.}

(2) The County Court of the County of York, the Court of General Sessions of the Peace, and the Division Courts of the said county, or any of such Courts, may sit at the same time, and the business thereof may be proceeded with simultaneously. 9 Edw. VII. c. 29, s. 14. ^{Local Courts in York.}

15.—(1) It shall be competent for any Judge of a County or District Court to hold any of the Courts in any county or district or to perform any other duty as a Judge of a County or District Court in any such county or district upon being required so to do by an order of the Governor-General in Council, made at the request of the Lieutenant-Governor. ^{Powers of Judge to act outside his county.}

(2) The Judge of any County or District Court may, without any such order, perform any judicial duty in any county or district on being requested so to do by the Judge of the County or District Court to whom the duty for any reason belongs. ^{At request of any other judge. R.S.C. c. 138, s. 31.}

(3) Any retired Judge of a County or District Court may hold any Court or perform any other duty of a Judge of a County or District Court in any county or district on being authorized so to do by an order of the Governor-General in Council, made at the request of the Lieutenant-Governor. ^{When retired County Judges may act for County Judges. Idem, s. 32.}

Power of a
Judge so
acting.
Idem. s. 31 (3).

(4) The Judge so required, requested or authorized as aforesaid shall, while acting, be deemed to be a Judge of the County or District Court of the county or district in which he is so required or requested to act, and shall have all the powers of such Judge.

Junior
Judges.

(5) In this section "Judge" shall include a Junior Judge. 9 Edw. VII. c. 29, s. 15.

Authorization
by Lieutenant-
Governor in
Council.

16. The Lieutenant-Governor in Council may empower a Judge or Junior Judge of a County or District Court to transact, at such place out of his county or district, to be named in the Order in Council, as may be deemed proper, all such business depending in his Court as may be transacted in Chambers where the solicitors for all parties reside in the place so named, or with the consent of the solicitors for all parties. 9 Edw. VII. c. 29, s. 3.

ALLOWANCES TO JUDGES OF DISTRICT COURTS.

Allowance to
judges of
district
courts.

17. In lieu of the fees otherwise payable to him under *The Surrogate Courts Act* and for services performed under *The Mechanics and Wage Earners Lien Act*, *the Woodman's Lien for Wages Act* and *The Rivers and Streams Act* there shall be paid to every Judge and Junior Judge of a District Court the sum of \$500 per annum, and the fees heretofore payable in money under any of the said Acts shall be payable in stamps, and shall form part of the Consolidated Revenue Fund. 10 Edw. VII. c. 26, s. 13.

SHORTHAND WRITERS.

Shorthand
writers—
appointment
of.

18.—(1) A shorthand writer may be appointed by the Lieutenant-Governor in Council for the local courts of each County and Provisional Judicial District.

To be under
direction of
judge.

Remuneration.

(2) The shorthand writer so appointed shall be subject to the direction of the Judge or, in his absence, of the Junior Judge or Judges, and shall be entitled to such remuneration by salary or by fees, or partly by salary and partly by fees, as the Lieutenant-Governor in Council may direct.

When paid by
salary only.

(3) If such shorthand writer is paid by salary only the fees payable in respect of his duties shall be applied in reduction of his salary, and the balance, if any, shall be paid by the county quarterly on the first days of January, April, July and October of every year.

Regulation of
fees and duties

(4) The fees and all matters relating to the duties of the shorthand writer shall be determined and regulated by the Judge of the County or District Court, subject to the approval of the Lieutenant-Governor in Council.

(5) Every city and separated town shall pay the county a proper proportion of the remuneration which, in case of disagreement, shall be determined by arbitration according to the provisions of *The Municipal Act*, and subject thereto, and unless and until the same is otherwise determined, the city or town shall pay to the county one-half of such remuneration. 9 Edw. VII. c. 29, s. 17.

INTERPRETERS.

19. If the Council of any county, by resolution, requests the appointment of an official interpreter to act at the Courts held in that county an appointment may be made in the same manner, and subject to the same terms and conditions, as provided with respect to shorthand writers by the next preceding section which shall apply as nearly as may be to official interpreters. 9 Edw. VII. c. 29, s. 18.

Note.—By 9 Edw. VII. c. 29, s. 19 (1), chapter 54 of R.S.O. 1897, and all amendments thereto are repealed, but by subsection 2 it is provided that notwithstanding the repeal of sections 19 to 28 of the said Act any district or group formed under the provisions of the said section 19 and then existing should continue to exist, and that the provisions of the said sections should continue to apply to such district or group.

[For certain Dominion enactments as to tenure of office and powers of Local Judges, see R.S.O. 1906, c. 138, ss. 30-32.]

CHAPTER 59.

An Act respecting the County Courts and District Courts.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The County Courts Act*. 10 Edw. VII. c. 30, s. 1.

A court for each county and district.

2. There shall be in and for every county and district a Court of Record, to be styled in counties, the County Court of the County (*or United Counties*) of (*naming the County or United Counties*) and in districts the District Court of the District of (*naming the district*). 10 Edw. VII. c. 30, s. 2.

JUDGES.

Judges.
Rev. Stat.
c. 58.

3. Subject to the provisions of *The County Judges Act*, the Court shall be presided over by the Judge or Junior Judge or by the acting or the Deputy Judge. 10 Edw. VII. c. 30, s. 3.

Illness or absence.

4. In case of the illness or absence of such Judges the Court may be presided over by a Judge of any other County or District Court, or by one of His Majesty's Counsel learned in the law, upon the request in writing of the Judge or of the Attorney-General for Ontario. 10 Edw. VII. c. 30, s. 4.

Seal.

5. Every such Court shall be provided with a suitable seal to be approved by the Lieutenant-Governor in Council. 10 Edw. VII. c. 30, s. 5.

CLERKS.

Appointment.

6. There shall be a Clerk of every such Court, who shall be appointed by the Lieutenant-Governor in Council, and shall hold office during pleasure. 10 Edw. VII. c. 30, s. 6.

Security.

7. The Clerk shall give security for the due performance of the duties of his office in such sum and in such manner and form as the Lieutenant-Governor in Council may direct. 10 Edw. VII. c. 30, s. 7.

Place of office.

8.—(1) The clerk shall keep his office in the Court House, or, if there is no room available therein, at such place in the county or district town as the Judge may direct.

(2) The Clerk of the County Court of the County of Essex may keep an office in some convenient place in the City of Windsor, subject to such arrangements as the County Council of the County of Essex may assent to, and subject also to the approval of the Lieutenant-Governor in Council. 10 Edw. VII. c. 30, s. 8.

In the County of Essex.

9. Except on holidays, and subject to Rules of Court as to office hours during vacations, the office of the Clerk shall be kept open from 10 o'clock in the forenoon until 4 o'clock in the afternoon, except on Saturday, when the office shall be kept open until 1 o'clock in the afternoon. 10 Edw. VII. c. 30, s. 9.

Office hours.

10. The Clerk shall whenever required so to do by the Crown Attorney, and at least once in every three months, deliver to him, verified by the affidavit of the Clerk, a full account in writing of all fines levied by order of the Court. 10 Edw. VII. c. 30, s. 10.

Account of fines levied.

[As to return of fees by County Court Clerks see *The Public Officers Act*, and as to payment of proportion to Provincial Treasurer see *The Public Officers Fees Act*.]

Rev. Stat. c. 15.

Rev. Stat. c. 17.

11. The Clerk shall tax costs, subject to an appeal to the Judge. 10 Edw. VII. c. 30, s. 11.

Taxation.

12. The Clerk shall not, for fee or reward, draw or advise upon a chattel mortgage or other paper or document connected with the duties of his office, and for which a fee is not expressly allowed by the tariff. 10 Edw. VII. c. 30, s. 11.

Clerk not to draw or advise on documents.

13. In the event of the death, resignation or removal from office of the Clerk, the Clerk of the Peace shall, *ex officio*, be the Clerk until another person is appointed and assumes the duties of the office, and every Clerk of the Peace while Clerk of the Court, shall, except in the County of York, be also *ex officio* Deputy Clerk of the Crown and Registrar of the Surrogate Court, if the Clerk held that office; and in case the Clerk was Local Registrar, the Clerk of the Peace, while he holds the office of Clerk of the Court, shall be *ex officio* Local Registrar. 10 Edw. VII. c. 30, s. 13.

Performance of duties during vacancy.

SPECIAL EXAMINERS.

14. The special examiners of the Supreme Court shall be officers of the County and District Courts, and shall possess the like powers in County and District Court cases as those possessed by them in cases in the Supreme Court. 10 Edw. VII. c. 30, s. 14.

Powers of special examiners.

SITTINGS.

Trial sittings
of County
Courts.
Rev. Stat.
c. 53.

15.—(1) Except in the Counties of Carleton, Middlesex, Wentworth and York, and subject to the provisions of *The County Judges Act*, sittings of the County Courts for the trial of issues of fact and assessments of damages, with or without a jury, shall be held semi-annually, to commence on the second Tuesday in June and December.

In Counties
of Carleton
and Middlesex.

(2) In the Counties of Carleton and Middlesex, two such sittings shall be held in each year, to commence on the first Tuesday in June and December.

In Counties of
York and
Wentworth.

(3) In the County of York and the County of Wentworth, four such sittings shall be held in each year, to commence on the first Tuesday in December and March, and on the second Tuesday in May and September.

County Court
sittings with-
out a jury.

(4) Except in the County of York and in the County of Wentworth, there shall be sittings of every County Court on the first Tuesday in April and October in each year for the trial of issues of fact and assessments of damages without a jury. 10 Edw. VII. c. 30, s. 15; 1 Geo. V. c. 17, s. 20.

Sittings of
District Courts.

16. Sittings of the District Courts for the trial of issues of fact and assessments of damages, with or without a jury, shall be held at,

(a) Bracebridge, on the second Tuesday of June and November;

(b) Fort Frances, on the first Tuesday of April and October;

(c) Gore Bay, on the last Tuesday of May and the third Tuesday of October;

(d) Kenora, on the first Tuesday of June and the second Tuesday of November;

(e) North Bay, on the second Tuesday of June and fourth Tuesday of November;

(f) Parry Sound, on the first Tuesday of June and December;

(g) Port Arthur, on the first Tuesday of May and the second Tuesday of November;

(h) Saulte Ste. Marie, on the second Tuesday of June and November; and at

(i) Sudbury, on the first Tuesday of June and on the fourth Tuesday of November. 10 Edw. VII. c. 30, s. 16; 2 Geo. V. c. 17, s. 11 (1, 2).

Hour of
sittings.

17. The sittings of the County Courts, provided for by subsections 1 and 2 of section 15, and the sittings of the Dis-

trict Courts, provided for by section 16, shall not open earlier than one o'clock in the afternoon of the first day of the sittings. 10 Edw. VII. c. 30, s. 17.

18. The Clerk shall be entitled to be paid by the County Clerk's fees for the sum of \$4 for each day's attendance at all sittings of the County Court, both non-jury and jury. 1 Geo. V. c. 17, s. 21.

19. Besides the regular sittings, additional sittings for trials without a jury may be held at such time as the Judge may direct or appoint; and such sittings shall be held as often as may be requisite for the due despatch of business. Power to hold additional sittings. 10 Edw. VII. c. 30, s. 18.

20. The Judges of any County or District Court may sit separately and concurrently for the despatch of the business of a sittings. Concurrent sittings for trial of jury and non-jury cases. 10 Edw. VII. c. 30, s. 19.

21.—(1) Where the Judge who is to hold the sittings is unable to hold the same at the time appointed the Sheriff, or in his absence the Deputy Sheriff, shall adjourn the Court by proclamation to an hour on the following day to be named by him, and so from day to day until the Judge is able to hold the Court, or until he receives other directions from the Judge or from the Provincial Secretary. Adjournment where Judge unable to attend.

(2) The Sheriff shall forthwith notify the Provincial Secretary of the adjournment. Notification of Provincial Secretary. 10 Edw. VII. c. 30, s. 20.

22.—(1) The County and District Courts shall have jurisdiction in:— Jurisdiction.

(a) Actions arising out of contract, expressed or implied, where the sum claimed does not exceed \$800; Contract.

(b) Personal actions, except actions for criminal conversation and actions for libel, where the sum claimed does not exceed \$500; Tort.

(c) Actions for trespass or injury to land where the sum claimed does not exceed \$500, unless the title to the land is in question, and in that case also where the value of the land does not exceed \$500, and the sum claimed does not exceed that amount; Injury to land.

(d) Actions for the obstruction of or interference with a right of way or other easement where the sum claimed does not exceed \$500, unless the title to the right or easement is in question, and in that case also where the value of the land over which the right or easement is claimed does not exceed that amount; Easements.

(e) Actions for the recovery of property, real or personal, including actions of replevin and actions of Recovery of property.

detinue where the value of the property does not exceed \$500;

Mortgages.

- (f) Actions for the enforcement by foreclosure or sale or for the redemption of mortgages, charges or liens, with or without a claim for delivery of possession or payment or both, where the sum claimed to be due does not exceed \$500. 10 Edw. VII. c. 30, s. 22 (1), *part*; 1 Geo. V. c. 17, s. 48;

Partnership.

- (g) Partnership actions where the joint stock or capital of the partnership does not exceed in amount or value \$2,000;

Legacies.

- (h) Actions by legatees under a will for the recovery or delivery of money or property bequeathed to them where the legacy does not exceed in value or amount \$500, and the estate of the testator does not exceed in value \$2,000;

Equitable relief.

- (i) All other actions for equitable relief where the subject matter involved does not exceed in value or amount \$500; and

Insolvency.

- (j) Actions and contestations for the determination of the right of creditors to rank upon insolvent estates where the claim of the creditor does not exceed \$500. 10 Edw. VII. c. 30, s. 22 (1), *part*.

Dispute of jurisdiction by defendant.

(2) Where a defendant intends to dispute the jurisdiction of the Court on the ground that the action, though otherwise within the proper competence of the Court, is not within it because of the amount claimed or of the value of the property in question or of the amount or value of the subject matter involved or, in the cases mentioned in clauses (g) and (h) of subsection 1, because the joint stock or capital of the partnership exceeds in amount or value \$2,000, or the estate of the testator exceeds in value \$2,000, he shall in his appearance or in his statement of defence state that he disputes the jurisdiction of the Court and the ground upon which he relies for disputing it; and, in default of his so doing, unless otherwise ordered by the Court or a Judge, the question of jurisdiction shall not afterwards be raised or the jurisdiction be brought in question. 10 Edw. VII. c. 30, s. 22 (2); 3-4 Geo. V. c. 18, s. 15 (1).

Transmission of papers.

(3) Where the notice mentioned in the next preceding subsection is given, the plaintiff may on *præcipe* require all papers and proceedings in the action to be transmitted to the proper office of the Supreme Court in the county or district in which the action was brought, and it shall be the duty of the Clerk of the County or District Court forthwith to transmit the same to such office.

Transfer at instance of plaintiff.

(4) When the papers and proceedings so transmitted are received at the proper office of the Supreme Court, the action

shall *ipso facto* be transferred to the Supreme Court. 10 Edw. VII. c. 30, s. 22 (3-4).

(5) Where the plaintiff does not exercise the right conferred by subsection 3 the defendant may, after the expiration of ten days from the entry of appearance if he has given notice that he disputes the jurisdiction of the Court on entering his appearance, or after the expiration of ten days from the filing of his statement of defence if he has given such notice in his statement of defence, apply to a Judge of the Supreme Court for an order transferring the action to that Court. 10 Edw. VII. c. 30, s. 22 (5); 3-4 Geo. V. c. 18, s. 15 (2). At instance of defendant.

(6) Where the Court or a Judge makes an order under the provisions of subsection 2 allowing the defendant to question the jurisdiction of the Court, the Court or Judge may direct the action to be transferred to the Supreme Court, on such terms as to costs and otherwise, as may be deemed just. Terms of order of transfer.

(7) Where an action is transferred to the Supreme Court under the provisions of this section, if the plaintiff is awarded costs, unless otherwise ordered by the Court or a Judge, they shall be taxed according to the scale of the Supreme Court, whether or not the action be in fact within the proper competence of the County or District Court. 10 Edw. VII. c. 30, s. 22 (6-7). Scale of costs in action transferred.

23.—(1) Where the defendant pleads a set-off or counterclaim either party, within six days after the plaintiff has delivered his reply to such defence of set-off, or his defence to the counterclaim, may apply to a Judge of the Supreme Court for an order transferring the action and counterclaim to the Supreme Court on the ground that such set-off or counterclaim involves matter beyond the jurisdiction of the Court. Where set off or counterclaim is beyond jurisdiction.

(2) The Judge, if satisfied that the set-off or counterclaim involves matter which exceeds the jurisdiction of the Court, may order the transfer upon such terms as to costs and otherwise as he may deem just. Judge's order transferring.

(3) If no such application is made within the time limited, or if an application so made has been refused, the jurisdiction of the Court to hear and determine the whole matter involved in the set-off or counterclaim shall be deemed to be established. 10 Edw. VII. c. 30, s. 23. Jurisdiction established where no order of transfer made.

24. Where an action has been transferred to the Supreme Court or to another County or District Court, under any provision of this Act, it shall be in the same plight and condition as it was in at the time of the transfer, and thereafter may be proceeded with as if it had been commenced in the Court into which it has been so transferred. 10 Edw. VII. c. 30, s. 24. Consequences of transfer.

Transfer of action to County or District Court having jurisdiction.

25. Where it appears in an action brought in a County or District Court that such Court has not cognizance thereof, but that the Court of some other County or District has jurisdiction to try the same, the Judge before whom the action is pending may, at any time before or during the trial thereof, order the action to be transferred to such other County or District Court upon such terms as to costs and otherwise as he may deem just. 10 Edw. VII. c. 30, s. 25.

Prohibition not to lie when case transferred.

26. Prohibition shall not lie in respect of an action or counterclaim which may be transferred under the provisions of this Act to the Supreme Court, or from one County or District Court into another County or District Court. 10 Edw. VII. c. 30, s. 26.

Abandonment of so much of claim as is in excess of jurisdiction.

27.—(1) Where it appears that the claim of the plaintiff is for an amount beyond the jurisdiction of the Court he may, by writing signed by him and filed, upon such terms as the Judge deems proper as to costs and otherwise, abandon the excess and in such case the plaintiff shall forfeit such excess, and shall not be entitled to recover it in any other action.

Idem.

(2) A defendant shall have the like right in respect of his set-off or counterclaim. 10 Edw. VII. c. 30, s. 27.

Relief which may be granted by Courts.

28. The Court shall, as regards all causes of action within its jurisdiction, have power to grant and shall grant such relief, redress or remedy, or combination of remedies, either absolute or conditional, including the power to grant vesting orders and to relieve against penalties and forfeitures, but shall not have the power to remove a trustee or to appoint a new trustee under *The Trustee Act*; and shall give such and the like effect to every ground of defence or counterclaim, equitable or legal, by the same mode of procedure, and in as full and ample a manner as might and ought to be done in the like case by the Supreme Court. 10 Edw. VII. c. 30, s. 28; 1 Geo. V. c. 17, s. 39.

Rev. Stat. c. 121.

In what cases and on what conditions causes shall be removable.

29. Except in the cases mentioned in subsections 3, 5 and 6 of section 22 and in section 23, no action shall be removed by order of *certiorari*, or otherwise, into the Supreme Court unless the debt or damages claimed amount to upwards of \$100, and then only on affidavit and by leave of a Judge of the Supreme Court, if it appears to the Judge fit to be tried in the Supreme Court, and upon such terms as to costs, giving security for debt or costs and otherwise as he deems just. 10 Edw. VII. c. 30, s. 29.

Venue for certain actions.

30.—(1) Unless by consent of the parties, or unless the place of trial is changed, actions under clauses (c) and (d) of section 22 shall be brought and tried in the court of the county or district in which the land is situate, and actions

under clause (g) of that section shall be brought and tried in the court of the county or district where the partnership has or had its principal place of business, and actions under clause (h) of that section shall be brought and tried in the court of the county or district where letters probate or of administration have issued, or where the deceased resided at the time of his death.

(2) Actions for the recovery of real property shall be brought and tried in the court of the county or district in which the property sought to be recovered is situate. Actions for the recovery of real property. 10 Edw. VII. c. 30, s. 30.

31. An action by or against a Judge shall not be brought in the court of which he is a Judge, but shall be brought in the court of a county or district adjoining that in which such Judge resides. Where action against Judge of Court may be brought. 10 Edw. VII. c. 30, s. 31.

32. Subject to the provisions of *The Judicature Act* and to Rules of Court, the practice and procedure of the Supreme Court shall apply to the County and District Courts. Proceduro. Rev. Stat. c. 56. 10 Edw. VII. c. 30, s. 32.

COSTS WHERE NO JURISDICTION.

33. Where the plaintiff fails to recover judgment by reason that the Court has not jurisdiction, the Court shall nevertheless have jurisdiction over the costs of the action or other proceeding, and may order by and to whom the same shall be paid. Costs where action fails for want of jurisdiction. 10 Edw. VII. c. 30, s. 33.

ENFORCING JUDGMENTS AND ORDERS.

34. Every County and District Court shall have the like power as is possessed by the Supreme Court of enforcing its judgments and orders in any part of Ontario, and may issue the like writs and process as may be issued out of the Supreme Court; and the same shall have the like force and effect as writs and process issued out of the Supreme Court. Power to enforce judgments and orders. 10 Edw. VII. c. 30, s. 34.

PUNISHMENT FOR CONTEMPT OF COURT.

35. Every County and District Court may punish by fine or imprisonment, or by both, for any wilful contempt of or resistance to its process, rules or orders; but the fine shall not in any case exceed \$100, nor shall the imprisonment exceed six months. Power to fine and imprison. 10 Edw. VII. c. 30, s. 35.

ACCOUNTS AND INQUIRIES.

36.—(1) Where it is proper to direct a reference, the same may be made to any officer to whom a reference may be directed by the Supreme Court or to the Clerk of the Court. References generally.

To judge.

(2) Where the Judge of the Court is Local Master, the reference may be made to himself, but no fees shall be charged by him on such reference.

Scale
or costs.

(3) Upon every such reference the fees to be paid and the costs to be allowed, whether as between party and party, or solicitor and client, shall be according to the County Court tariff. 10 Edw. VII. c. 30, s. 36.

Powers of
Court.

37.—(1) In an action in a County or District Court the Judge shall have the same powers with regard to the making of an order of reference as may be exercised by a Judge of the Supreme Court in an action therein.

Appeal from
referee.

(2) An appeal, in like manner and within the same time as in like cases in actions in the Supreme Court, shall lie from the report on the reference to the Judge of the County or District Court in chambers, who shall, upon such appeal, have the same power as may be exercised by a Judge in like cases in the Supreme Court.

Appeal to
High Court
Division.

(3) An appeal shall lie from any order, judgment or decision of the Judge of a County or District Court, and from the report upon a reference made under subsection 2 of section 36 to a Divisional Court, and the proceedings and practice on the appeal as to staying proceedings and otherwise shall be similar to the proceedings and practice relating to an appeal from a judgment under the provisions of section 39.

Except where
the Crown
is a party.

(4) Nothing in this section shall empower the Judge of a County or District Court to refer any proceeding to which His Majesty is a party, or any question or issue in any such proceeding, to an official referee, without the consent of His Majesty. 10 Edw. VII. c. 30, s. 37 (1-4).

APPEALS.

Meaning of
"party to a
cause or
matter" and
"appellant."

38. The terms "party to a cause or matter," and "appellant," hereinafter used shall include a person suing or being sued in the name of another, and a person on whose behalf or for whose benefit an action is prosecuted or defended. 10 Edw. VII. c. 30, s. 38.

Appeals to
Divisional
Courts.

39.—(1) Any party to a cause or matter may appeal to a Divisional Court from any judgment directed to be entered at or after the trial or from a refusal to enter a judgment. 10 Edw. VII. c. 30, s. 39 (1); 2 Geo. V. c. 17, s. 11 (3).

Moving for
new trial.

(2) A motion for a new trial shall be deemed an appeal, and shall be made to a Divisional Court. 10 Edw. VII. c. 30, s. 39 (2).

Appeals from
decision of
Judge.

40.—(1) An appeal shall also lie to a Divisional Court at the instance of any party to a cause or matter from

(a) Every decision of a Judge under any of the powers conferred upon him by any Rules of Court or by any statute, unless provision is therein made to the contrary;

(b) Every decision or order made by a Judge in Chambers under the provisions of the law relating to interpleader proceedings, the examination of debtors, attachment of debts and proceedings against garnishees;

(c) Every decision or order in any cause or matter disposing of any right or claim; and from

(d) Any decision or order of a Judge, whether pronounced or made at the trial, or on appeal from taxation or otherwise, which has the effect of depriving the plaintiff of County Court costs on the ground that his action is of the proper competence of the Division Court, or of entitling him to County Court costs on the ground that the action is not of the proper competence of the Division Court. 10 Edw. VII. c. 30, s. 40 (1); 2 Geo. V. c. 17, s. 11 (4). Appeal as to costs.

(2) This section shall not apply to an order or decision which is not final in its nature, but is merely interlocutory or where jurisdiction is given to the Judge as *persona designata*. 10 Edw. VII. c. 30, s. 40; 2 Geo. V. c. 17, s. 11 (5).

[As to appeals where Judge is *persona designata*. See *Rev. Stat. c. 79.*
The Judges' Orders Enforcement Act.

41. An appeal may be had, notwithstanding that judgment has been signed. 10 Edw. VII. c. 30, s. 41. Appeal after judgment signed.

42.—(1) The Judge shall, at the request of the appellant, certify under his hand to the proper officer of the Supreme Court the pleadings in the cause and all motions or orders made, granted or refused therein, and his judgment or decision, and, where a trial has been had, his charge to the jury, if any, the evidence and all objections and exceptions thereto, or to his charge, and all other papers in the cause affecting the question raised by the appeal. Pleadings, etc., to be certified.

(2) The Judge shall be required to certify only the pleadings, motions, orders, affidavits, evidence and other material necessary for the full understanding of the matter in appeal, together with his judgment or decision. 10 Edw. VII. c. 30, s. 42. Certifying proceedings under ss. 40 or 41.

43. Subject to the next following section, any Judge of the County or District Court appealed from may, upon application to him, stay proceedings in the action to enable the Staying proceedings on appeal.

appeal to be brought, upon such terms and for such time as he may deem just. 10 Edw. VII. c. 30, s. 43.

Setting down
appeals.

44.—(1) The appeal shall be set down for argument at the first sittings of a Divisional Court which commences after the expiration of thirty days from the judgment, order or decision complained of.

(2) Subject to Rules of Court, a Divisional Court, or a Judge of the Supreme Court, notwithstanding that the Judge of the County or District Court has not certified the pleadings and other papers, or that they have not been filed in the Supreme Court, may extend the time for setting down the appeal or for giving notice of setting down or for doing any act or taking any proceeding in or in relation to the appeal; and may, if the certificate is incomplete or incorrect, direct the same to be amended or to be sent back to the Judge for amendment. 10 Edw. VII. c. 30, s. 44.

Powers to
amend and
receive further
evidence.

45.—(1) The Divisional Court shall have all the powers and duties, as to amendment and otherwise, of the Judge appealed from, and full discretionary power to receive further evidence upon questions of fact, either by oral examination before the Court, or as may be directed.

(2) Such further evidence may be given without special leave as to matters which have occurred after the date of the judgment, order or decision complained of.

(3) Except as provided by subsection 2, upon an appeal from a judgment, order or decision given upon the merits at the trial or hearing, such further evidence shall be admitted on special grounds only, and not without the special leave of the Court. 10 Edw. VII. c. 30, s. 45.

Order of
Divisional
Court on
appeal.

46.—(1) On an appeal the Divisional Court may set aside the judgment and may direct any other judgment to be entered, or may direct a new trial to be had, and make such other order as to costs and otherwise as appears just.

(2) The decision of the Divisional Court shall be certified by the Registrar of the Appellate Division to the Clerk of the Court with whom the judgment or order appealed from was entered, who shall thereupon cause the same to be entered in the proper judgment or order book, and all subsequent proceedings may be taken thereupon, as if the decision had been given in the Court below. 10 Edw. VII. c. 30, s. 46.

TARIFF OF COSTS.

Tariff of costs
for counsel
and solicitors.
Rev. Stat.
c. 63.

47.—(1) The Board of County Judges appointed under *The Division Courts Act*, may frame a tariff of costs to be allowed to solicitors and counsel in respect of actions, matters and proceedings in the County and District Courts.

(2) The Board shall certify to the Judges authorized to make Rules under *The Judicature Act*, any tariff so framed, or any alteration thereof; and the Judges may approve, disallow or amend such tariff or alteration; and such tariff or alteration, when approved, shall have the same force and effect as if made under that Act by the Judges approving the same. 10 Edw. VII. c. 30, s. 47.

Submission to
Judges of
Supreme
Court.
Rev. Stat.
c. 56.

CHAPTER 60.

An Act respecting the Courts of General Sessions of the Peace.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The General Sessions Act*. 9 Edw. VII. c. 30, s. 1.

Interpretation. **2.** In this Act “the Court” shall mean “The Court of General Sessions of the Peace.” 9 Edw. VII. c. 30, s. 2.

JURISDICTION.

Jurisdiction. **3.** The Courts of General Sessions of the Peace shall have jurisdiction to try all criminal offences except homicide, and the offences mentioned in section 583 of the Criminal Code of Canada. 9 Edw. VII. c. 30, s. 3.

SITTINGS.

General Sessions when to be held. **4.—(1)** Except in the Counties of Carleton, Middlesex, and York, sittings of the Court shall be held in every county semi-annually, commencing on the second Tuesday in the months of June and December in each year.

Counties of York and Wentworth. **(2)** In the Counties of York and Wentworth, sittings of the Court shall be held four times in the year, commencing on the first Tuesday in the months of December and March, and on the second Tuesday in the months of May and September in each year.

Counties of Carleton and Middlesex. **(3)** In the Counties of Carleton and Middlesex two such sittings shall be held in each year to commence on the first Tuesday in June and December. 9 Edw. VII. c. 30, s. 4; 10 Edw. VII. c. 26, s. 32; 1 Geo. V. c. 17, s. 11 (2), (3).

Place of sittings. **5.** The sittings of the Court shall be held in the county town of the county, unless the Lieutenant-Governor, by proclamation, authorizes the holding of the sittings at some other place in the county. 9 Edw. VII. c. 30, s. 5.

Sittings in Provisional Judicial Districts. **6.** In the Provisional Judicial Districts sittings of the Court shall be held at the same time and place as the sittings of the District Courts for the trial of issues of fact and assessment of damages with or without a jury. 2 Geo. V. c. 17, s. 12.

7. The Judge of the County or District Court as the case may be, or, in case of his death, illness or absence or at his request the Junior or Deputy Judge shall be the Chairman of the Court and shall preside at the sittings thereof. 9 Edw. VII. c. 30, s. 7. County Judge to preside.

8. Where a Judge is present it shall not be necessary, in order to constitute the Court, that an associate or other Justice of the Peace should be present. 9 Edw. VII. c. 30, s. 8. Sitting of associate Justice of Peace dispensed with when a Judge present.

9.—(1) Where a Judge is unable to hold the sittings at the time appointed the Sheriff or his deputy may, by proclamation, adjourn the Court to any hour on the following day to be by him named, and so from day to day until a Judge is able to hold the Court or until he receives other directions from the Judge or from the Attorney-General. When adjournment permitted

(2) The Sheriff shall forthwith give notice of such adjournment to the Attorney-General. 9 Edw. VII. c. 30, s. 9. Attorney-General to be notified.

RESCINDING ORDERS OF COURT.

10. Except where otherwise provided by law an order, which has been passed or recorded by any number of Justices of the Peace, shall not be rescinded unless at least the same number is present. 9 Edw. VII. c. 30, s. 10. When order of Justices may be rescinded.

CLERK OF THE PEACE.

11.—(1) There shall be a Clerk of the Peace for every County and District, who shall be appointed by the Lieutenant-Governor in Council. Clerk of the Peace.

(2) No person shall be appointed Clerk of the Peace who is not a Barrister of at least three years' standing at the Bar of Ontario; and, except in the County of York, every Clerk of the Peace shall be *ex-officio* Crown Attorney for the county or district of which he is Clerk of the Peace. Clerk to be a Barrister. Ex-officio. Crown Attorney.

(3) Except in the County of York, whenever a vacancy occurs in the office of the Clerk of the Peace for a county or district in which the Clerk of the Peace was not, previous to such vacancy occurring, also Crown Attorney, the Crown Attorney for the County or District shall be *ex-officio* Clerk of the Peace. On any vacancy, Crown Attorney to be Clerk of the Peace.

(4) Where a person holding the office of Crown Attorney and Clerk of the Peace desires, on account of the condition of his health or from his age, to resign the former, retaining the latter office, he may do so with the approval of the Lieutenant-Governor in Council; and in such case the person appointed in his place shall, on a vacancy occurring in the office of the Clerk of the Peace, be *ex-officio* Clerk of the Peace. Resigning office of Crown Attorney and retaining office of Clerk of the Peace.

In County
of York.

(5) In the County of York, the offices of Clerk of the Peace and Crown Attorney may be held by different persons. 9 Edw. VII. c. 30, s. 11.

Rev. Stat.
c. 96.

As to fees of Clerk of Peace, see The Administration of Justice Expenses Act.

TARIFF OF FEES.

Tariff of
fees.
Rev. Stat.
c. 63.

12.—(1) The Board of County Judges appointed under *The Division Courts Act*, or the majority of them, may frame a tariff of fees and costs to be allowed in respect of proceedings in the Courts of General Sessions of the Peace to counsel and solicitors practising therein, and to witnesses and to the Clerk of the Peace, including the Crown Attorney.

Submission
to Judges
of Supreme
Court.
Rev. Stat.
c. 56.

(2) The Board or any three members thereof shall certify any tariff so framed or any amendment thereof to the Judges authorized to make rules under *The Judicature Act*, who may approve, disallow or amend such tariff or amendment.

Effect of
tariff.

(3) A tariff so approved, or amended and approved, shall have the same force and effect as if it had been enacted by this Legislature. 9 Edw. VII. c. 30, s. 12.

CHAPTER 61.

An Act respecting the County Court Judges Criminal Courts.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The County Court Judges' Criminal Courts Act.*" 9 Edw. VII. c. 31, s. 1. Short title.

2.—(1) The Judge of every County and District Court, or the Junior or Deputy Judge thereof, authorized to preside at the sittings of the Court of the General Sessions of the Peace, is constituted a Court of Record for the trial, out of sessions and without a jury, of any person committed to gaol on a charge of being guilty of any offence for which such person may be tried at a Court of General Sessions of the Peace, and for which the person so committed consents to be tried out of sessions, and without a jury; and the Court so constituted shall have the powers and perform the duties mentioned in Part XVIII. of *The Criminal Code*. Judges of the County Court constituted a Court for trial of certain offenders without jury. Powers and duties. R.S.C., 1906, c. 146.

(2) The Court so constituted shall be called The County or District Court Judges' Criminal Court of the County or District in which the same is held, as the case may be. 9 Edw. VII. c. 31, s. 2. Style of Court.

CHAPTER 62.

An Act respecting the Surrogate Courts.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. 1. This Act may be cited as *The Surrogate Courts Act*.
10 Edw. VII. c. 31, s. 1.

INTERPRETATION.

Interpreta-
tion.

"Adminis-
tration."

"Common
form busi-
ness."

County.

"County
Court."

"Matters and
causes testa-
mentary."

"Will."

2. In this Act:

- (a) "Administration" shall include all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special or limited purposes;
- (b) "Common form business" shall mean the business of obtaining probate or administration where there is no contention as to the right thereto, including the passing of probate and administration through a Surrogate Court when the contest is terminated, and all business of a non-contentious nature to be taken in a Surrogate Court in matters of testacy and intestacy not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration;
- (c) "County" shall include Provisional Judicial District;
- (d) "County Court" shall include District Court;
- (e) "Matters and causes testamentary" shall include all matters and causes relating to the grant and revocation of letters probate of wills or letters of administration;
- (f) "Will" shall include a testament, and all other testamentary instruments of which probate may be granted. 10 Edw. VII. c. 31, s. 2.

SURROGATE COURTS.

A Surrogate
Court to be in
each County.

3. There shall be in and for every County a Court of Record to be styled "The Surrogate Court of the County (or united

Counties or District) of———” (*inserting the name of the County or United Counties or District*). 10 Edw. VII. c. 31, s. 3.

4. Every such Court shall be provided with a suitable seal^{Seal.} to be approved of by the Lieutenant-Governor. 10 Edw. VII. c. 31, s. 4.

5. The sittings of the Court shall be held in the County^{Sittings, where held.} town and shall be presided over by the judge thereof. 10 Edw. VII. c. 31, s. 5.

JUDGES.

6.—(1) The Judge of the Surrogate Court shall be^{Appointment.} appointed by the Lieutenant-Governor in Council, and shall hold office during good behaviour and residence in the County for which he is appointed, and shall be subject to be removed by the Lieutenant-Governor in Council for inability, incapacity or misbehaviour established to his satisfaction.

(2) Every appointment of a Surrogate Court Judge heretofore made by the Lieutenant-Governor in Council is hereby declared to be as valid as if this section had been enacted at the time of his appointment. 10 Edw. VII. c. 31, s. 6.

7. The Judge of a County Court appointed before the 7th^{Judges} day of April, 1896, or where there are more Judges than one, the Senior Judge appointed before that day shall continue^{ex-officio of Surrogate Courts.} to be *ex-officio* Judge of the Surrogate Court for the County. 10 Edw. VII. c. 31, s. 7.

8.—(1) In case of the illness or absence, or at the request^{Illness, absence or vacancy in office of Judge.} in writing, of the Judge of the Surrogate Court of any County or District any Judge who has authority to preside over the County or District Court of the County or District, or in the case of a county or district for which there is only one Judge any barrister of 10 years' standing, on the request in writing of the Judge of the Surrogate Court or of the Attorney-General of Ontario, may act as Judge of the Surrogate Court. 1 Geo. V. c. 18, s. 1.

(2) In case of a vacancy in the office of Judge of the Surrogate Court a Judge of the County or District Court of the County or District may act as Judge of the Surrogate Court, or if there be no such Judge of the County or District Court, or none present in the County or District, or able to act, any Judge of any other County or District Court may so act, upon the written request of the Attorney-General of Ontario. ^{Idem.}

(3) A Judge of the County or District Court, while so^{Acting judge, when entitled to fees.} acting, shall have all the powers and privileges and may perform all the duties of the Judge of the Surrogate Court.

(4) Except in the case of a vacancy, where a Judge so acts he shall not be entitled to the fees, unless with the consent of the Judge of the Surrogate Court.

When judge-
ship of
Surrogate
Court
vacated.

(5) Where a Judge of a County Court, who is also Judge of the Surrogate Court, vacates his County Court Judgeship, unless the Lieutenant-Governor in Council otherwise directs, he shall thereby vacate his Judgeship of the Surrogate Court. 10 Edw. VII. c. 31, s. 8.

Oath of
Office.

9. Every Judge of a Surrogate Court, before entering upon the duties of his office, shall take and subscribe the following oath before some person appointed by the Lieutenant-Governor to administer the same, that is to say:

"I, _____, do swear that I will truly and faithfully, according to the best of my skill and knowledge, execute the duties, powers and trusts of Judge of the Surrogate Court of the County (or United Counties or District), of
So help me God."

10 Edw. VII. c. 31, s. 9, *part*.

SURROGATE CLERK AND REGISTRARS.

Appointment
of Surrogate
Clerk, his
duties.

10. There shall be an officer, to be called the Surrogate Clerk, who shall be deemed an officer of the Supreme Court, and shall be appointed by the Lieutenant-Governor in Council. 10 Edw. VII. c. 31, s. 10.

Registrar.

11. There shall be a Registrar for every Court who shall be appointed by the Lieutenant-Governor in Council. 10 Edw. VII. c. 31, s. 11.

Oath of
Registrar.

12. Every Registrar, before entering upon the duties of his office, shall take and subscribe the following oath:

"I, _____, do swear that I will diligently and faithfully execute the office of Registrar of the Surrogate Court of the _____, and that I will not knowingly permit or suffer any alteration, obliteration or destruction to be made or done, of any will or testamentary paper, or other document or paper committed to my charge. So help me God."

10 Edw. VII. c. 31, s. 12.

Security to be
given by
Registrars.

13. Every Registrar, before entering upon the duties of his office, shall furnish such security as may be required by the Lieutenant-Governor in Council for the due performance of the duties of his office, and the provisions of *The Public Officers Act*, relating to the giving of security, shall apply to such security. 10 Edw. VII. c. 31, s. 13.

Rev. Stat.
c. 15.

Registrar's
office.

14.—(1) The Registrar shall keep his office in the Court House of the county, and a room therein shall be provided for that purpose, and, in the event of there being no available room therein, then at such place in the county town as the Judge directs.

(2) The Registrar of the Surrogate Court of the County of ^{In the} Essex may keep an office in some convenient place in the City ^{County of} Essex, of Windsor, subject to such arrangements as the County Council of the County of Essex may assent to, and subject also to the approval of the Lieutenant-Governor in Council. 10 Edw. VII. c. 31, s. 14.

15. The office of the Registrar shall be a depository for all ^{Depository} wills of living persons given to him for safe keeping, and the ^{for the} Registrar shall receive and keep the same upon payment of ^{wills of} such fees and under such regulations as may be prescribed by ^{living} the Surrogate Court Rules. 10 Edw. VII. c. 31, s. 15.

16. The Registrar shall file and preserve all original wills ^{Preservation} of which probate or letters of administration with the will ^{of testamen-} annexed are granted, and all other papers used in any matter ^{tary instru-} in his Court, subject to such regulations as may be prescribed ^{ments, papers,} by the Surrogate Court Rules. 10 Edw. VII. c. 31, s. 16.

17. On the third day of every month, or oftener if required ^{Transmission} by the Surrogate Court Rules, every Registrar shall transmit ^{to Surrogate} by mail to the Surrogate Clerk a list, in such form and con- ^{Clerk of} taining such particulars as may be prescribed by such Rules, ^{list of} of the grants of probate and administration made by his Court ^{grants, etc.} up to the last day of the preceding month, and also a copy, certified by him to be a correct copy, of every will to which the same relate, and he shall in like manner make a return of every revocation of grant of probate or administration. 10 Edw. VII. c. 31, s. 17.

18. Neither the Surrogate Clerk nor a Registrar shall for ^{Surrogate} fee or reward draw or advise upon any will, or upon any ^{Clerk and} paper or document connected with the duties of his office, for ^{Registrars not} which a fee is not expressly allowed to him by the tariff ^{to take fees} or advising on ^{for drawing} certain docu- ^{certain docu-} ments. 10 Edw. VII. c. 31, s. 18.

[For returns by Registrars of Surrogate Courts, see *The Public Officers' Act.* ^{Rev. Stat.} c. 15.]

JURISDICTION AND POWERS OF THE SURROGATE COURTS

19. Subject to the provisions of *The Judicature Act*, all ^{Testamentary} jurisdiction and authority, voluntary and contentious, in ^{jurisdiction to} relation to matters and causes testamentary, and in relation ^{be exercised by} to the granting or revoking probate of wills and letters of ^{the Surrogate} administration of the property of deceased persons, and all ^{Courts} matters arising out of or connected with the grant or revoca- ^{Rev. Stat.} tion of grant of probate or administration, shall be exercised ^{c. 56.} in the name of His Majesty, in the several Surrogate Courts. 10 Edw. VII. c. 31, s. 19.

20. Every Surrogate Court shall have full power, juris- ^{Powers and} diction and authority: ^{jurisdiction of}

- (a) To issue process and hold cognizance of all matters relating to the granting probate of wills and letters of administration, and to grant probate of wills and letters of administration of the property of persons dying intestate, and to revoke the same; and
- (b) To hear and determine all questions, causes and suits in relation to such matters, and to all matters and causes testamentary. 10 Edw. VII. c. 31, s. 20.

The same as in former Court of Probate for Upper Canada.

21.—(1) Subject to the provisions herein contained, every such Court shall also have the same powers and the grants and orders of such Court shall have the same effect throughout Ontario, as the former Court of Probate for Upper Canada, and its grants and orders respectively had in relation to the personal estate of deceased persons and to causes testamentary within its jurisdiction; and all duties which, by statute or otherwise, were imposed on or exercised by such Court of Probate or the Judge thereof in respect of probates, administrations and matters and causes testamentary, and the appointment of guardians and otherwise, shall be performed by the Surrogate Courts and the Judges thereof, within their respective jurisdictions.

No action for legacy or distribution of residue.

(2) An action for a legacy or for the distribution of a residue shall not be entertained by any Surrogate Court. 10 Edw. VII. c. 31, s. 21.

Administration not to be granted to persons non-resident.

22. Letters of administration shall not be granted to a person not resident in Ontario, but this shall not apply to resealing letters under section 74. 10 Edw. VII. c. 31, s. 22.

Probate or letters ancillary to persons not residing in British Dominions.

23. Letters probate shall not be granted to a person not resident in Ontario or elsewhere in the British Dominions, unless such person shall have given the like security as is required from an administrator in case of intestacy, unless, in the opinion of the Judge, such security should, under special circumstances, be dispensed with or be reduced in amount. 10 Edw. VII. c. 31, s. 23.

Forum.

24.—(1) The granting of probate or letters of administration shall belong to the Surrogate Court of the county in which the testator or intestate had at the time of his death his fixed place of abode.

(2) If the testator or intestate had no fixed place of abode in, or resided out of Ontario at the time of his death, the grant may be made by the Surrogate Court of any county in which the testator or intestate had property at the time of his death.

(3) In other cases the granting of probate or letters of administration shall belong to the Surrogate Court of any county. 10 Edw. VII. c. 31, s. 24.

25.—(1) Where the person or one of the persons entitled to apply for probate of a will or for letters of administration is Judge of the Court having jurisdiction in the matter, and he does not renounce, application by him for such probate or letters, and any subsequent application in the matter of the estate by him or by any other person may be made to the Judge of the Surrogate Court for an adjoining county, who shall have the same authority as to such application, and generally in all matters connected with the estate, as if he were the Judge of the Surrogate Court having jurisdiction, and he shall be entitled to the same fees, to be paid in stamps if his fees have been commuted, as he would have been entitled to if the application had been made or proceedings had been taken in the Court of which he is Judge.

Where Surrogate Judge is applicant.

(2) All proceedings shall be carried on in the Surrogate Court having jurisdiction. 10 Edw. VII. c. 31, s. 25.

26. Letters probate and letters of administration granted by a Surrogate Court not having jurisdiction to grant the same shall, nevertheless, until revoked, have the same force and effect as if they had been granted by a Surrogate Court having jurisdiction. 10 Edw. VII. c. 31, s. 28.

Effect of probate or letters granted without jurisdiction.

27.—(1) Letters probate and letters of administration shall have effect over the property of the deceased in all parts of Ontario.

Effect of probate and administration.

(2) This section shall be subject to the provisions of section 57 and to the provisions contained in the letters probate or letters of administration. 10 Edw. VII. c. 31, s. 27.

POWER TO TRY BY JURY.

28.—(1) The Court may cause any question of fact arising in any proceeding therein to be tried by a jury before the Judge of the Court; and such trial shall take place at some ensuing sittings of the County Court for the County, and be conducted in the same manner as other trials by jury in such Court, and the parties shall be entitled to their right of challenge; and, for all purposes of or incidental to the trial of questions of fact by a jury, the Court and the Judge thereof shall have the same jurisdiction, power and authority in all respects as belong to the County Courts, and the Judges thereof, for like purposes.

Trial of questions of fact by a jury.

(2) The question directed to be tried by a jury shall be reduced into writing in such form as the Court directs. 10 Edw. VII. c. 31, s. 28.

The issue.

SITTINGS.

29.—(1) There shall be four sittings in each year for hearing and determining matters and causes in contentious cases and business of a contentious nature, which, except in

Sittings prescribed.

the County of York, shall commence on the second Monday in January and the first Monday in April, July and October.

In the County
of York.

(2) The sittings in the County of York shall commence on the second Monday in January, June and October, and the first Monday in April in each year. 10 Edw. VII. c. 31, s. 29.

Additional
sittings.

(3) Additional sittings may be held at such time as the Judge may direct or appoint, and shall be held as often as may be requisite for the due despatch of business. 2 Geo. V. c. 20, s. 1.

WITNESSES, EVIDENCE, PROCEDURE AND PRACTICE.

Evidence,
practice and
procedure.

30. The rules of evidence observed in and, except as herein otherwise provided and subject to the Surrogate Court Rules in contentious matters, the practice and procedure of the Supreme Court shall apply to the Surrogate Courts, and, with respect to all matters within the jurisdiction of the Surrogate Courts, such Courts and the Judges and officers thereof respectively shall have and may exercise all the powers of the Supreme Court and of the Judges and officers thereof. 10 Edw. VII. c. 31, s. 30.

Production of
instruments
purporting to
be testamentary.

31.—(1) Whether any suit or other proceeding is or is not pending in the Court with respect to any probate or administration, every Surrogate Court may, on motion or otherwise in a summary way, order any person to produce and bring before the Registrar, or otherwise as the Court may direct, any paper or writing being or purporting to be testamentary which is shown to be in the possession or under the control of such person.

Examination
of persons
touching such
instruments.

(2) If it is not shown that such paper or writing is in the possession or under the control of such person, but it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open Court or before the Registrar, or such person as the Court may direct, or upon interrogatories respecting the same, and to produce and bring in such paper or writing, and such person shall be subject to the like process in case of default in not attending or in not answering questions or interrogatories or not bringing in such paper or writing, as he would have been subject to if he had been a party to a suit in the Court and had made such default; and the costs of such motion or other proceeding shall be in the discretion of the Court. 10 Edw. VII. c. 31, s. 31.

REFERENCE OR REMOVAL TO THE SUPREME COURT.

Case stated
by
agreement.

32. Where there is a contention as to the grant of probate or administration, and the parties agree, the contention shall be referred to and determined by the Supreme Court on a

case to be stated, and the probate or administration shall not be granted until the contention is terminated and disposed of by judgment, or otherwise. 10 Edw. VII. c. 31, s. 32.

33.—(1) Where in any cause or proceeding any conten-^{Removal by}tion arises as to the grant of probate or administration, or ^{order.}any question is raised as to law or facts relating to matters and causes testamentary the same may be removed into the Supreme Court by order of a Judge of such Court, made on motion supported by affidavit, and on notice to the other parties concerned.

(2) The Judge may impose such terms as to payment of or ^{Terms.}security for costs or otherwise as he may deem just.

(3) No cause or proceeding shall be removed unless it is of ^{When order}such a nature and of such importance as to render it proper ^{may be}that the same should be disposed of by the Supreme Court, ^{made.}nor unless the property of the deceased exceeds \$2,000 in value.

(4) The final order or judgment of the Supreme Court in ^{Transmission}any cause or proceeding so removed shall, for the guidance ^{of final order}of the Surrogate Court, be transmitted by the Surrogate ^{to Surrogate}Clerk to the Registrar of the Surrogate Court from which the cause or proceeding was removed. 10 Edw. VII. c. 31, s. 33.

APPEALS.

34.—(1) Any person who deems himself aggrieved by an ^{To what}order, determination or judgment of a Surrogate Court, in ^{Court.}any matter or cause, may appeal therefrom to a Divisional Court.

(2) No such appeal shall lie unless the value of the pro-^{When}perty to be affected by such -order, determination or judg- ^{permitted.}ment exceeds \$200.

(3) The practice and procedure upon and in relation to an ^{Practice.}appeal shall be the same as is provided by *The County Courts* ^{Rev. Stat.}*Act* as to appeals from the County Court. ^{c. 59.}

(4) A motion for a new trial after a trial by jury under section 28 shall be deemed an appeal and shall be made to a Divisional Court. 10 Edw. VII. c. 31, s. 34.

(5) An appeal shall also lie from any order, decision or ^{Appeal from}determination of the Judge of a Surrogate Court, on the tak- ^{audit of}ing of accounts in like manner as from the report of a Master ^{accounts.}under a reference directed by the Supreme Court, and the practice and procedure, upon and in relation to the appeal, shall be the same as upon an appeal from such a report.

(6) Subsections 2 and 3 shall not apply to the appeal provided for by subsection 5. 1 Geo. V. c. 18, s. 2.

PRACTICE.

Proofs to lead grant.

Where deceased resided in Ontario.

Affidavit as to place of abode.

35. On every application for probate of a will or for letters of administration where the deceased was resident in Ontario at the time of his death, his place of abode at the time of his death shall be made to appear by affidavit of the person or one of the persons making the application; and thereupon and upon proof of the will, or in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted. 10 Edw. VII. c. 31, s. 35.

Where deceased had no fixed place of abode in Ontario.

Affidavit.

36. On every application for probate of a will or for letters of administration where the deceased had no fixed place of abode in or resided out of Ontario at the time of his death, the same shall be made to appear by affidavit of the person or one of the persons making the application, and that the deceased died leaving property within the county to the Surrogate Court of which the application is made, or leaving no property in Ontario, as the case may be, and that notice of the application has been published at least three times successively in the *Ontario Gazette*; and thereupon and upon proof of the will or, in case of intestacy, upon proof that the deceased died intestate, probate of the will or letters of administration, as the case may be, may be granted. 10 Edw. VII. c. 31, s. 36.

Conclusive-ness of affidavits.

When proceedings may be stayed.

37. The affidavit as to the place of abode and property of the deceased under the next preceding two sections, for the purpose of giving a particular Court jurisdiction, shall be conclusive for the purpose of authorizing the exercise of such jurisdiction; and no grant of probate or administration shall be liable to be recalled, revoked or otherwise impeached by reason that the deceased had no fixed place of abode within the particular county, or had not property therein at the time of his death; but in case it is made to appear to the Judge of a Surrogate Court before whom the application is pending, that the place of abode of the deceased, or the situation of his property, has not been correctly stated in the affidavit, the Judge may stay all further proceedings and make such order as to the costs of the proceedings before him as he may deem just. 10 Edw. VII. c. 31, s. 37.

Proof, etc., requisite for obtaining grant to party not next of kin to intestate.

38. Where application is made for letters of administration by a person not entitled to the same as next of kin of the deceased, an order shall be made requiring the next of kin, or others having or pretending interest in the property of the deceased, resident in Ontario, to show cause why the administration should not be granted to the person applying therefor; and if neither the next of kin nor any person of the kindred of the deceased resides in Ontario, a copy of the

order shall be served or published in the manner prescribed by the Surrogate Court Rules. 10 Edw. VII. c. 31, s. 38.

39.—(1) If the next of kin, usually residing in Ontario and regularly entitled to administer, is absent from Ontario, the Court having jurisdiction may grant a temporary administration to the applicant, or to such other person as the Court thinks fit, for a limited time, or subject to be revoked upon the return of such next of kin to Ontario. Temporary administration in certain cases.

(2) The administrator so appointed shall give such security as the Court directs, and shall have all the rights and powers of a general administrator, and shall be subject to the immediate control of the Court. 10 Edw. VII. c. 31, s. 39. Security to be given.

Notice of Applications.

40. Notice of every application for the grant of probate or administration shall be transmitted by the Registrar, by registered post, to the Surrogate Clerk by the next post after the application, and the notice shall specify the name and description or addition, if any, of the deceased, the time of his death, and the place of his abode at his decease, as stated in the affidavits made in support of the application, and the name of the person by whom the application is made, and such other particulars as may be prescribed by the Surrogate Court Rules. 10 Edw. VII. c. 31, s. 40. Notice to Surrogate Clerk. of applications.

41. Unless upon special order of the Court, no probate or administration shall be granted until the Registrar has received a certificate, under the hand of the Surrogate Clerk, that no other application appears to have been made in respect of the property of the deceased, which certificate the Surrogate Clerk shall forward as soon as may be to the Registrar. 10 Edw. VII. c. 31, s. 41. Certificate from Surrogate Clerk.

42. All notices in respect of applications shall be filed and kept by the Surrogate Clerk. 10 Edw. VII. c. 31, s. 42. Surrogate Clerk to file notices.

43. The Surrogate Clerk shall, with reference to every such notice, examine all notices of such applications received from the several Registrars, so far as appears to be necessary to ascertain whether or not application for probate or administration in respect of the property of the deceased has been made in more than one Surrogate Court, and he shall communicate with the Registrars as occasion may require in relation to such applications. 10 Edw. VII. c. 31, s. 43. Duty of Surrogate Clerk with reference to notices.

44.—(1) Where it appears by the certificate of the Surrogate Clerk that application for probate or administration has been made to two or more Surrogate Courts, the Judges of such Courts respectively shall stay proceedings therein, leaving the parties to apply to a Judge of the Supreme Court for such direction in the matter as he may deem necessary. Where application made to more than one Surrogate Court.

Judgment as to what Court shall have jurisdiction.

(2) On application made to such Judge he shall inquire into the matter in a summary way and adjudge and determine what Surrogate Court has jurisdiction.

Order as to costs.

(3) The Judge may order costs to be paid by any of the applicants, and the order shall be enforced by the Supreme Court.

Judge's decision to be final.

(4) The determination of the Judge shall be final and conclusive, and the Surrogate Clerk shall, without delay, transmit a certified copy of the Judge's order to the Registrars of the Surrogate Courts wherein such applications were made. 10 Edw. VII. c. 31, s. 44.

Caveats.

Lodging.

45. Caveats against the grant of probate or administration may be lodged with the Surrogate Clerk or with the Registrar of any Surrogate Court. 10 Edw. VII. c. 31, s. 45.

Notice of caveats.

46. Upon a caveat being lodged, the Registrar shall without delay send a copy thereof to the Surrogate Clerk to be entered among the caveats lodged with him, and, upon notice of an application being received from the Registrar of a Surrogate Court under section 40, the Surrogate Clerk shall without delay forward to him notice of any caveat that has been so lodged touching such application, and the notice shall accompany or be embodied in the certificate mentioned in section 41. 10 Edw. VII. c. 31, s. 46.

Proof of Wills in Solemn Form.

Citation of persons interested.

47. Where proceedings are taken for proving a will in solemn form, or for revoking the probate of a will on the ground of the invalidity thereof, or where in any other contentious cause or matter the validity of a will is disputed, all persons having or pretending to have any interest in the property affected by the will may, subject to the provisions of this Act and to the Surrogate Court Rules, be summoned to see the proceedings, and may be permitted to become parties, subject to such Rules and to the discretion of the Court. 10 Edw. VII. c. 31, s. 47.

Executors.

Citation to prove or renounce.

Imp. 21 Hen. 8, c. 5, s. 6.

48 The Court having jurisdiction may summon any person named executor of any will to prove, or refuse to prove, such will, and to bring in inventories and to do every other thing necessary or expedient concerning the same. 10 Edw. VII. c. 31, s. 48.

Consequences of failure to appear.

49. When an executor survives the testator, but dies without having taken probate, and when an executor is summoned to take probate, and does not appear his right in respect of

the executorship shall wholly cease, and the representation to the testator, and the administration of his property, shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor. 10 Edw. VII. c. 31, s. 49.

Infant Executors.

50. Where an infant is sole executor, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the Court shall think fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will may be granted to him. 10 Edw. VII. c. 31, s. 50.

Where an infant sole executor.

Imp. 38 Geo. 3. c. 87, s. 6.

51. The person to whom such administration is granted shall have the same powers as an administrator has by virtue of an administration granted to him *durante minore etate* of the next of kin. 10 Edw. VII. c. 31, s. 51.

Power of administrator in such case.

Imp 38 Geo. 3. c. 87, s. 7.

COPIES OF WILLS.

52. An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the Registrar on payment of the prescribed fees. 10 Edw. VII. c. 31, s. 52.

How copies obtained.

ADMINISTRATION PENDENTE LITE.

53. Pending an action touching the validity of the will of any deceased person, or for obtaining, recalling or revoking any probate or grant of administration, the Surrogate Court having jurisdiction to grant administration in the case of intestacy may appoint an administrator of the property of the deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator other than the right of distributing the residue of the property; and every such administrator shall be subject to the immediate control and direction of the Court; and the Court may direct that such administrator shall receive out of the property of the deceased such reasonable remuneration as the Court may deem proper. 10 Edw. VII. c. 31, s. 53.

When and by whom granted.

Rights and powers of the administrator.

POWERS AND DUTIES OF EXECUTORS, ADMINISTRATORS AND GUARDIANS.

Generally.

54.—(1) Subject to the provisions of subsection 3, where a person dies intestate, or the executor named in his will refuses to prove the same, administration of the property of the deceased may be committed by the Surrogate Court having jurisdiction, to the husband, or to the wife, or to the next of kin, or to the wife and next of kin, as in the discretion of

To what persons administration shall be granted. Imp. 31 Edw. 3. St. 1, c. 11. 21 Hen. 8, c. 5, s. 2.

the Court shall seem best; and where more persons than one claim the administration as next of kin who are equal in degree of kindred to the deceased, or where one only desires the administration as next of kin, where there are more persons than one of equal kindred the administration may be committed to such one or more of such next of kin as the Court may think fit. 10 Edw. VII. c. 31, s. 54 (1).

Appointment
at request
of parties
interested.

(2) Subject to subsection 3, where a person dies wholly intestate as to his property, or leaving a will affecting property, but without having appointed an executor thereof, or an executor willing and competent to take probate and the persons entitled to administration, or a majority of such of them as are resident in Ontario, request that another person be appointed to be the administrator of the property of the deceased, or of any part of it, the right which such persons possessed to have administration granted to them in respect of it shall belong to such person. 2 Geo. V. c. 20, s. 2.

General power
as to appoint-
ment of ad-
ministrator
under special
circumstan-
ces.

(3) Where a person dies wholly intestate as to his property, or leaving a will affecting property, but without having appointed an executor thereof willing and competent to take probate, or where the executor was at the time of the death of such person resident out of Ontario, and it appears to the Court to be necessary or convenient by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the property of the deceased, or of any part of such property, other than the person who if this subsection had not been enacted would have been entitled to the grant of administration, it shall not be obligatory upon the Court to grant administration to the person who if this subsection had not been enacted would have been entitled to a grant thereof, but the Court may appoint such person as the Court thinks fit upon his giving such security as the Court directs, and every such administration may be limited as the Court thinks fit. 10 Edw. VII. c. 31, s. 54 (2).

Appointment
of trust
company.

(4) A trust company may be appointed as administrator under subsection 2 or subsection 3, either alone or jointly with another person. 2 Geo. V. c. 20, s. 3.

After grant of
administration
no person to
act as executor.

55. After a grant of administration no person shall have power to sue or prosecute any action, or otherwise act as executor of the deceased as to the property comprised in or affected by such grant or administration, until such administration has been recalled or revoked. 10 Edw. VII. c. 31, s. 55.

Power of
administra-
tors to
sue, and to
be account-
able as
executors.
Imp. 81
Edw. 8,
St. 1, c. 11.

56. An administrator appointed by the Surrogate Court to administer the estate of a deceased person shall be entitled to sue for, and recover, the debts and other property of the deceased, and shall be accountable for the due administration of the same in like manner as an executor. 10 Edw. VII. c. 31, s. 56.

57. A person entitled to letters of administration to the property of a deceased person shall be entitled to take out such letters limited to the personal estate of the deceased, exclusive of the real estate. 10 Edw. VII. c. 31, s. 57. Administration limited to personal estate.

Inventories.

58.—(1) The person applying for a grant of probate, or administration, shall, before the same is granted, make or cause to be made and delivered to the Registrar a true and perfect inventory verified by the oath of the applicant of all the property which belonged to the deceased at the time of his death. Filing inventory. Imp. 21 Hen. 8, c. 5, s. 4.

(2) When after the grant of probate, or letters of administration, any property belonging to the deceased at the time of his death, and not included in such inventory, is discovered by the executor, or administrator, he shall, within six months thereafter, make and deliver to the Registrar an inventory, duly verified by oath, of such newly discovered property. Further inventory of subsequently discovered property.

(3) Where the application or grant is limited to part only of the property of the deceased it shall be sufficient to set forth in such inventory the property intended to be affected by such application or grant. 10 Edw. VII. c. 31, s. 58. Inventory in case of limited grant.

Executor Renouncing.

59. Where a person renounces probate of the will of which he is appointed an executor his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his property shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor. 10 Edw. VII. c. 31, s. 59. Consequences upon executor renouncing.

Removal of Executor or Administrator.

60.—(1) The Surrogate Court by which the grant of probate or letters of administration was made shall, where the entire estate left by the deceased does not exceed \$1,000, have the like authority for the removal of an executor or administrator and to appoint some other proper person to act in his place as is possessed by the Supreme Court, but nothing in this section shall affect the jurisdiction of a Surrogate Court to revoke a grant of probate or of letters of administration. Power to remove executors or administrators in certain cases.

(2) Where the executor or administrator removed is not a sole executor or administrator the Court need not, unless it sees fit, appoint any person to act in the room of the person removed, and, if no such appointment is made, the rights and estate of the executor or administrator removed shall Where not sole executor.

pass to the remaining executor or administrator as if the person so removed had died.

Executor of substituted executor.

(3) The executor of a person appointed an executor under this section shall not by virtue of such executorship be an executor of the estate of which his testator was appointed executor under this section, whether such person acted alone or was the last survivor of several executors. 10 Edw. VII. c. 31, s. 60.

Filing order for removal.

61. A certified copy of the order of removal shall be filed with the Surrogate Clerk and another copy with the Registrar of the Court by which probate or administration was granted, and such officers shall, at or upon the entry of the grant in the registers in their respective offices, make in red ink a short note giving the date and effect of the order, and shall also make a reference thereto in the index of the register at the place where such grant is indexed. 10 Edw. VII. c. 31, s. 61.

Securities.

Bonds.

62. Except where otherwise provided by law, every person to whom a grant of administration, including administration with the will annexed, is committed shall give a bond to the Judge of the Surrogate Court by which the grant is made, to enure for the benefit of the Judge of the Court for the time being, or in case of the separation of counties, to enure for the benefit of any Judge of a Surrogate Court to be named by the Supreme Court for that purpose, with a surety or sureties as may be required by the Judge, conditioned for the due collecting, getting in, administering and accounting for the property of the deceased, and the bond shall be in the form prescribed by the Surrogate Court Rules; and in cases not provided for by the Rules, the bond shall be in such form as the Judge may by special order direct. 10 Edw. VII. c. 31, s. 62.

Penalty in bonds, etc., and as to dividing liabilities of sureties.

63.—(1) The bond shall be in a penalty of double the amount under which the property of the deceased has been sworn, unless the Judge directs that the same shall be reduced, and the Judge may also direct that more bonds than one may be given, so as to limit the liability of any surety to such amount as the Judge deems proper.

When amount of security may be reduced.

(2) The amount of the security may from time to time be reduced by the Judge to double the amount of the property remaining in the hands of the administrator, according to the last audit of his accounts by the Judge. 10 Edw. VII. c. 31, s. 63.

Power of Surrogate Courts as to assignment of bonds.

64. The Judge on application made in a summary way, and on being satisfied that the condition of the bond has been broken, may order the Registrar to assign the bond to some

person to be named in the order, and such person shall thereupon be entitled to sue on the bond in his own name, as if the same had been originally given to him, and shall recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach of the condition of the bond. 10 Edw. VII. c. 31, s. 64.

65. The oaths to be taken by executors, administrators and guardians, and the bonds or other security to be given by administrators and guardians, and probates, letters of administration and letters of guardianship shall require the executor, administrator or guardian to render a just and full account of his executorship, administration or guardianship only when thereunto lawfully required. 10 Edw. VII. c. 31, s. 65. Accounts to be rendered.

66.—(1) Where a surety for an administrator or guardian dies or becomes insolvent or where for any other reason the security furnished by an administrator or guardian becomes inadequate or insufficient, the Judge may require other or additional security to be furnished, and if the same is not furnished as directed by the Judge he may revoke the grant of administration or letters of guardianship. New or additional security in certain cases.

(2) The order may be made by the Judge *sua sponte* or on the application of any person interested. 10 Edw. VII. c. 31, s. 66.

67.—(1) Where a surety for an administrator or guardian desires to be discharged from his obligation, or where an administrator or guardian desires to substitute other security for that furnished by him, the Judge may allow other security to be furnished in lieu of that of such surety or of the security so furnished, on such terms as to the Judge may seem proper, and may direct that, on the substituted security being furnished and, if the Judge so directs, the accounts of the administrator or guardian being passed, the surety or sureties be discharged. Substitution of security.

(2) The application may be made *ex parte* or on such notice as the Judge directs. 10 Edw. VII. c. 31, s. 67.

68. Where an administrator has passed his final account and has paid into Court or distributed the whole of the property of the deceased which has come to his hands, the Judge may direct the bond or other security furnished by the administrator to be delivered up to be cancelled. 10 Edw. VII. c. 31, s. 68. Cancellation of security.

[As to bonds of guarantee companies see *The Guarantee Companies Security Act.* Rev. Stat. c. 190.]

Contestation of Claims Against Estate.

Notice of
contestation of
claim against
estate.

69.—(1) Where a claim or demand is made against the estate of a deceased person which, in the opinion of his personal representative, is unjust, in whole or in part, or where such personal representative has notice of such a claim or demand, he may, at any time before payment, serve the claimant with a notice in writing that he contests the same in whole or in part, and, if in part, stating what part and also referring to this section.

Application
for order
allowing claim.

(2) Subject to the provisions of subsection 3, the claimant may thereupon apply to the Judge of the Surrogate Court out of which the probate or letters of administration of the estate issued, for an order allowing his claim and determining the amount of it, and the Judge shall hear the parties and their witnesses and shall make such order upon the application as he may deem just, and if he does not make such application within thirty days after receiving the notice or within such further time as the Judge either before or after the expiration of the thirty days may allow, he shall be deemed to have abandoned his claim, and the same shall be forever barred.

Claim within
jurisdiction of
Division Court.

(3) Where the claim amounts to not more than \$100 and is otherwise within the jurisdiction of the Division Court the application shall be made to a Judge of a Division Court in which an action for the recovery of the claim might be brought, and shall be heard by the Judge at the sittings of such Court, unless the claimant and the personal representative consent to the application being made to the Judge of the Surrogate Court, and in that case the application may be made to him.

Notice in
such cases.

(4) Not less than seven days' notice of the application shall be given to the personal representative, and where the application is to be made to the Surrogate Court Judge, shall also be given to the Official Guardian if infants are concerned, and to such, if any, of the persons beneficially interested in the estate as the Judge may direct.

Right of per-
sons interested
to be heard.

(5) Where the application is made to the Judge of the Surrogate Court, in addition to the persons to whom notice has been given, any other person who is interested in the estate shall have the right to be heard and to take part in the proceedings.

Appeal from
surrogate
judge.

(6) If the amount of the claim, or the part of it which is contested, exceeds \$200 an order of the Judge shall be subject to appeal as provided by subsection 5 of section 34, and the order, unless reversed on appeal and as varied, if varied, on appeal, when filed in the County Court of the county shall, irrespective of the amount of the claim, become and may be enforced in like manner as a judgment of that Court.

(7) Where the claim, or the part of it which is contested, amounts to \$800 or more, instead of proceeding as provided by this section, the Judge shall, on the application of either party, or of any of the parties mentioned in subsection 5, direct the creditor to bring an action in the Supreme Court for the recovery or the establishment of his claim, on such terms and conditions as the Judge may deem just.

When action
in High
Court by
directed.

(8) The order of the Judge of a Division Court shall have the effect of, and may be enforced in like manner as a judgment of that Court.

Effect of order
of division
court judge.

(9) Where the claim amounts to not more than \$100, and is otherwise within the jurisdiction of the Division Court, the fees and costs shall be according to the tariff of that Court, and in other cases the fees payable to the Judge of the Surrogate Court and to the Registrar shall be the same as are allowed on an audit in an estate of a value equal to the amount of the claim or so much thereof as is contested.

Costs when
claims within
division court
jurisdiction.

(10) Where an appeal lies as provided by subsection 6, if the personal representative does not appeal from the order, the Official Guardian or any person beneficially interested in the estate may, by leave of a Judge of the Supreme Court, appeal therefrom.

Right of per-
sons interested
in appeal.

(11) Where the personal representative appeals, the Official Guardian, and any person beneficially interested in the estate, may, by leave of the Court which hears the appeal, appear and be heard in support thereof.

Right of per-
son interested
to be heard
on appeal.

(12) The provisions of this section shall apply, notwithstanding that the claim or demand is not presently payable, and that, for that reason, an action for the recovery of it could not be brought, and in such a case the order of the Judge shall not be enforceable by execution until the claim or demand becomes payable. 1 Geo. V. c. 18, s. 3.

Claims not
presently
payable.

Accounts of Executor, Administrator or Guardian.

70. An executor, who is also a trustee under the will, may be required to account for his trusteeship in the same manner as he may be required to account in respect of his executorship. 10 Edw. VII. c. 31, s. 70.

Accounting by
executor
trustee.

71.—(1) Where an executor, administrator, trustee, under a will of which he is an executor, or a guardian, has filed in the proper Surrogate Court an account of his dealings with the estate, and the Judge has approved thereof, in whole or in part, if he is subsequently required to pass his accounts in the Supreme Court, such approval, except so far as mistake or fraud is shown, shall be binding upon any person who was notified of the proceedings taken before the Surrogate Judge.

Effect of
approval of
accounts by
Surrogate
Judge.

or who was present or represented thereat, and upon every one claiming under any such person.

Passing accounts by guardians.

(2) A guardian appointed by the Surrogate Court may pass the accounts of his dealings with the estate before the Judge of the Court by which letters of guardianship were issued.

Powers of judge on passing accounts.

(3) The Judge, on passing the accounts of an executor, administrator or such a trustee, shall have jurisdiction to enter into and make full enquiry and accounting of and concerning the whole property which the deceased was possessed of or entitled to, and the administration and disbursement thereof in as full and ample a manner as may be done in the Master's Office under an administration order, and, for such purpose, may take evidence and decide all disputed matters arising in such accounting subject to an appeal under section 34.

Notice to persons interested.

(4) The persons interested in the taking of such accounts or the making of such enquiries shall, if resident within Ontario, be entitled to not less than seven days' notice thereof, and, if resident out of Ontario, shall be entitled to such notice as the Judge shall direct. 10 Edw. VII. c. 31, s. 71 (1-4).

Where an infant or lunatic is interested.

(5) Where an infant or a person of unsound mind is interested, such notice may be served on the Official Guardian, except in the case of a person confined in a Provincial Hospital for the Insane, when such notice shall be served on the Inspector of Prisons and Public Charities. 1 Geo. V. c. 17, s. 71.

At whose instance executors or administrators compellable to account.
Imp. 1 Jac. 2, c. 17, s. 6.

72.—(1) Neither an executor nor an administrator shall be required by any Court to render an account of the property of the deceased, otherwise than by an inventory thereof, unless at the instance or on behalf of some person interested in such property or of a creditor of the deceased, nor shall such executor or administrator be otherwise compellable to account before any Judge.

(2) This section shall apply notwithstanding any provision to the contrary of any bond or security heretofore given by the executor or administrator. 10 Edw. VII. c. 31, s. 72.

ESTATES OF SMALL VALUE.

Fees where estate does not exceed \$400.

73.—(1) Where letters probate, letters of administration or letters of guardianship are sought and the whole property of the deceased or of the ward does not exceed in value \$400, the Registrar shall prepare the necessary papers to lead grant, including all papers and proofs required by the Succession Duty Act, and the bond, if any, and administer the necessary oaths; and the total amount to be charged to the applicant for all the proceedings and services shall be \$2.

(2) Where letters probate, letters of administration or letters of guardianship are sought, and the whole property of the deceased or of the ward exceeds in value \$400, but does not exceed \$1,000, the fees payable to the Judge and the Registrar shall be one-half of the fees payable according to the tariff in the case of an estate not exceeding in value \$1,000.

Where exceeds \$400, but not \$1,000.

(3) If the Judge has reason to believe that the property exceeds in value \$400 or \$1,000, as the case may be, he shall refuse to proceed with the application until he is satisfied as to the real value.

Judge may satisfy himself as to real value.

(4) Subject to the provisions of subsection 1, where the whole property of the deceased, or of the ward, consists of insurance money, or of insurance money and wearing apparel, although general letters probate, general letters of administration or letters of guardianship are sought, the fees payable thereon shall be as follows:—

Fees where estate consists of insurance moneys and wearing apparel.

Where the insurance money does not exceed \$1,000	\$4 00
Where the insurance money exceeds \$1,000, but does not exceed \$2,000	6 00
Where the insurance money exceeds \$2,000, but does not exceed \$3,000	8 00

(5) The Lieutenant-Governor in Council may apportion the fees payable between the Judge and the Registrar.

(6) The fees prescribed by this section shall be exclusive of the fees payable to the Crown under Schedule "A" (2) and shall not include the fees payable in respect of contentious business. 2 Geo. V. c. 20, s. 4.

Fees to be exclusive of fees payable to Crown.

ANCILLARY PROBATES AND LETTERS OF ADMINISTRATION.

74.—(1) Where probate or letters of administration, or other legal document purporting to be of the same nature, granted by a Court of competent jurisdiction in the United Kingdom, or in any Province or territory of the Dominion, or in any other British possession, is produced to, and a copy thereof deposited with the Registrar of any Surrogate Court, and the prescribed fees are paid as on a grant of probate or administration, the probate or letters of administration, or other document shall, under the direction of the Judge, be sealed with the seal of the Surrogate Court, and shall thereupon be of the like force and effect in Ontario, as if the same had been originally granted by such Surrogate Court, and shall, so far as regards Ontario, be subject to any order made by such Court, or on appeal therefrom, as if the probate or letters of administration had been granted thereby.

Manner of giving effect to grants of probate, etc., of English or Colonial Courts.

(2) The letters of administration shall not be sealed with the seal of the Surrogate Court until a certificate has been

Security required.

filed, under the hand of the Registrar of the Court which issued the letters, that security has been given in such Court in a sum of sufficient amount to cover as well the assets within the jurisdiction of such Court as the assets within Ontario, or in the absence of such certificate, until like security is given to the Judge of the Surrogate Court covering the assets in Ontario as in the case of granting original letters of administration. 10 Edw. VII. c. 31, s. 74.

FEEES AND COSTS.

As to fees payable to the Crown.

75.—(1) The fees mentioned in Schedule A shall be payable in law stamps.

Affixing stamps.

(2) The stamps, in respect of a grant of probate or administration or guardianship, shall be affixed to the order for the grant, and not to the probate or letters of administration or guardianship.

Idem.

(3) In case of commutation of the Judges' fees, the fees heretofore payable to the Judge shall be paid in law stamps, and such stamps shall, in the case of passing accounts, be affixed to the copy of the order filed with the Surrogate Registrar. 10 Edw. VII. c. 31, s. 75.

As to fees to be taken by Judges, etc., to their own use.

76. Subject to the provisions of sections 73 to 75 and sections 77 to 79, the Judge may demand and take to his own use the fees mentioned in Schedule B, which shall be collected by the Registrar on or before each proceeding and paid over to the Judge, and annual returns of such fees, up to the 31st day of the preceding December, shall be made to the Provincial Secretary by the Registrar on or before the 15th day of January in each year. 10 Edw. VII. c. 31, s. 76.

On what property fees to be charged.

77. The fees payable shall be based on the amount of what, before the 1st day of July, 1886, was personal property. 10 Edw. VII. c. 31, s. 77.

Commutation of fees of Judges.

78.—(1) The Lieutenant-Governor in Council may, with the consent of the Judge, commute the fees payable to him under this Act for a fixed annual sum not exceeding the average annual amount of the fees payable to the Judge during the next preceding five years; and, when a vacancy occurs, any order made under this subsection may be rescinded, or varied, but in no case shall an Order in Council name a sum exceeding the average annual amount of fees payable to the Judge during the next preceding five years.

Fees of judges in York, Carleton, Wentworth and Middlesex.

(2) In the cases of the counties of York, Carleton, Wentworth and Middlesex the Lieutenant-Governor in Council may direct payment to the Judges and to the junior Judges of the County Courts of such Counties respectively of such part of the fees payable to the Judge as he may determine, and in every such case the excess, if any, shall be paid over to the Treasurer of Ontario.

(3) Except in the case of the counties mentioned in the next preceding subsection the Lieutenant-Governor in Council may direct that, where in any year the fees payable to the Judge exceed \$1,000, the Junior Judge or, where he is the Surrogate Judge, the Senior Judge shall receive, out of the excess, a sum not exceeding \$666. In other counties.

(4) Except in the case of the Counties mentioned in subsection 2, where the fees payable to the Judge in any year exceed \$1,000, the excess, except so much thereof as is payable to the Junior Judge or, if he is the Surrogate Judge, to the Senior Judge, under the next preceding subsection, shall be paid over to the Treasurer of Ontario. Fees over \$1,000 to be paid to Provincial Treasurer.

(5) The powers conferred by subsections 2 and 3 may be exercised notwithstanding that the fees payable to the Judge have been commuted.

(6) Every Order in Council made under this section shall be laid before the Assembly forthwith if the Legislature is then in session, and if it is not in session, within the first seven days of the session next after the order is made. 10 Edw. VII. c. 31, s. 78. Laying order before Assembly.

79.—(1) The Board of County Judges may prescribe a tariff of the fees and costs to be taken by the registrars and officers of the Surrogate Courts, and to be allowed to solicitors and counsel practising therein for duties and services in respect of proceedings in such Courts, and to witnesses therein, and no other fees or costs than those so authorized shall be taken by or allowed to such registrars, officers, solicitors, counsel and witnesses: Tariff.

(2) The Board may also make rules for regulating the practice and procedure in the Surrogate Courts. Practice.

(3) The Board, or three members thereof, shall certify to the Judges authorized to make rules under section 109 or section 110 of *The Judicature Act*, any rule or tariff so framed, or any alteration thereof, and any Judges authorized to make rules under that Act may approve, disallow or amend the same. 10 Edw. VII. c. 31, s. 79. Allowance of tariff or rules. Rev. Stat. c. 56. Taxation of costs.

80. The bill of a solicitor for any fees, charges or disbursements in respect of business transacted in a Surrogate Court, whether contentious or otherwise, or any matter connected therewith, shall, as well between solicitor and client as between party and party, be subject to taxation in such Court. 10 Edw. VII. c. 31, s. 80.

SCHEDULE A.

FEES PAYABLE TO THE CROWN.

1

On proceedings in the offices of Registrars.

	\$	c.
On every application for probate, administration or guardianship (including notice thereof to Surrogate Clerk, but not postage)	0	50
On certificate of Surrogate Clerk upon such application (including transmission to Registrar, but not postage)	0	50
On every instrument or process with seal of Court	0	50
Entry and notification of caveat, (not including postage)...	0	50
On every grant of probate or administration, as follows, viz:		
Where the property devolving does not exceed \$1,000	0	50
For every additional \$1,000 or fraction thereof	0	50
On every final judgment in contentious or disputed cases.....	1	00
On deposit of a will for safe custody	0	50

2

On proceedings in the office of the Surrogate Clerk.

Fees payable
in Surrogate
Clerk's office.

The following fees shall be payable notwithstanding anything contained in section 73 of this Act or in section 175 of *The Ontario Insurance Act* :—

	\$	c.
On every search for grant of probate, administration, guardianship, or other matter in Clerk's office (other than searches on application of Registrars)	0	50
On every certificate of search or extract	1	00
(If exceeding three folios, 10 cents for each additional folio.)		
On every certificate respecting other application or caveat, where the necessary search does not extend beyond three years	0	50
Where the necessary search extends beyond three years, 10 cents additional for every year beyond three years.		
On every certificate, where the whole estate does not exceed in value \$400; or where the estate consists of insurance money only, not exceeding \$400	0	30
On every other certificate issued by the Clerk	0	50
On every order made on application to a Judge of the High Court Division and transmission of same, exclusive of postage	0	80
On entry of every appeal	1	00
On every judgment on appeal and transmission, exclusive of postage	3	00
On entry of caveat	0	50
On every judgment or order on appeal	2	50

10 Edw. VII. c. 31, Sched. A.

SCHEDULE B.

FEES PAYABLE TO JUDGE.

To Judges.

On every grant of probate or administration:

Where the property devolving does not exceed \$1,200	2	00
Where the property devolving exceeds \$1,200 but does not exceed \$3,000	3	00

Where the property devolving exceeds \$3,000 but does not exceed \$4,000	4 00
And for every additional \$1,000, or fraction thereof, the additional sum of	1 00
On every appointment of a guardian	2 00
On every order or appointment	0 50
On every special attendance or attendance to grant probate or administration or upon an appointment when an audit is adjourned	1 00
On every audit where the total of the accounts to be audited does not exceed \$1,000	1 00
per hour, but not to exceed \$2.00 on any day.	
On every audit where such total exceeds \$1,000, but is under \$10,000	1 00
per hour, but not to exceed \$5.00 on any day.	
On every audit where such total is or exceeds \$10,000, but is under \$50,000	1 50
per hour, but not to exceed \$6.00 on any day.	
On every audit where such total is or exceeds \$50,000	2 00
per hour, but not to exceed \$10.00 on any day.	

For every day's sitting in contentious or disputed cases, similar fees to those allowed in cases of audit.

10 Edw. VII. c. 31, Sched. B.

CHAPTER 63.

An Act respecting the Division Courts.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

SHORT TITLE.

Short title. **1.** This Act may be cited as *The Division Courts Act*.
10 Edw. VII. c. 32, s. 1.

INTERPRETATION.

Interpretation. **2.**—(1) In this Act:—

- "Action." (a) "Action" shall include a proceeding, suit, matter and cause;
- "County." (b) "County" shall include Provisional County and Provisional Judicial District;
- "County Court." (c) "County Court" shall include District Court;
- "Defendant." (d) "Defendant" shall include primary debtor;
- "Division." (e) "Division" shall mean the territory in and for which a Division Court is established;
- "Inspector." (f) "Inspector" shall mean the Inspector of Division Courts;
- "Judge." (g) "Judge" shall mean and include the Judge and a Junior Judge of the County Court of the County in which the division for which a Division Court is constituted is situate;
- "Judgment creditor." (h) "Judgment creditor" shall include a creditor who has obtained judgment against a garnishee;
- "Judgment debtor." (i) "Judgment debtor" shall include a garnishee against whom judgment has been recovered;
- "Plaintiff." (j) "Plaintiff" shall include primary creditor;
- "Prescribed Form." (k) "Prescribed form" shall mean the form prescribed by this Act or by the general rules or orders relating to Division Courts.

Exclusive powers of County Judge. (2) Where in this Act, any power or authority is conferred or any duty is imposed upon the Judge of the County Court, it shall be exercised or performed by him and not by a Junior Judge. 10 Edw. VII. c. 32, s. 2.

3. Part I., except where otherwise therein provided, shall apply to every County and Provisional Judicial District in Ontario. Part II. shall be applicable only to Provisional Judicial Districts. 10 Edw. VII. c. 32, s. 3. Territorial application of parts of Act.

PART I.

APPLICABLE BOTH TO COUNTIES AND DISTRICTS.

THE COURTS.

4. The Division Courts, as existing at the time this Act takes effect, shall continue. 10 Edw. VII. c. 32, s. 4. Courts continued.

5. There shall be not less than three nor more than twelve Division Courts in each county, of which there shall be at least one in each city and county town. 10 Edw. VII. c. 32, s. 5. Number of courts in each county.

6. The court in each division shall be called "The First (*or as the case may be*) Division Court of the County of .". 10 Edw. VII. c. 32, s. 6. Designation of court.

7. Every court shall have a seal, with which all process shall be sealed or stamped, and which shall be paid for out of the Consolidated Revenue Fund. 10 Edw. VII. c. 32, s. 7. Each court to have a seal.

8. The court shall be a Court of Record. 10 Edw. VII. c. 32, s. 8. To be Courts of Record.

9. The Lieutenant-Governor in Council may designate the place within the division where the office of the clerk shall be situated. 10 Edw. VII. c. 32, s. 9. Place of office of Clerk.

10.—(1) A sittings of the court shall be held in each division once in every two months, or oftener in the discretion of the Judge who presides over the Division Courts of the county, and the Judge may appoint and from time to time alter the times and places for holding such courts, and shall notify the clerk thereof. Time and place of holding courts.

(2) If the Judge of the county court, the sheriff and the inspector, or any two of them, certify to the Lieutenant-Governor that, in any division of the county, it is expedient that the court should not be held so often as once in every two months, the Lieutenant-Governor in Council may order the court to be held at such periods as to him seems meet, but a court shall be held in the division at least once in every six months. 10 Edw. VII. c. 32, s. 10. The Lieutenant-Governor may, in certain cases, regulate holding of courts.

11. In any city in which two Division Courts are established, all or any of the sittings of both such courts may be held in either of such divisions, and the clerks of both courts Holding of courts in cities, offices of clerks therein.

may, with the approval of the Lieutenant-Governor in Council, keep their offices in the same division. 10 Edw. VII. c. 32, s. 11.

Sittings in
Toronto.

12. Each of the courts for divisions within the City of Toronto shall, except during the month of August, hold sittings as follows:—

- (a) At least weekly for the trial of actions;
- (b) At least monthly for the hearing of judgment summonses; and
- (c) At least once in every two months for the trial of actions where juries have been demanded.
10 Edw. VII. c. 32, s. 12.

Division
Courts accom-
modation.

13.—(1) The local municipality in which a Division Court is held shall provide a court room, not in or connected with an hotel, and other necessary accommodation for holding the court.

If there be no
proper court
room, etc., the
Judge may
hold court in
any suitable
place.

(2) If a proper court room and other necessary accommodation are not furnished by the municipality, the Judge may hold the court in any suitable place in the division, or in any other division of the county in which suitable accommodation is provided, and the owner, lessee or tenant of the building in which the court is held shall be entitled to receive from the municipality whose duty it was to provide proper accommodation for the court the sum of \$5 for every day on which the court is held in the building.

Expenses for
rent.

Judge to ap-
portion costs in
certain cases.

(3) Where a municipality, not being a city or town, furnishes a court room and other necessary accommodation, or pays for the use of any building, the municipality shall be entitled to recover from any other municipality the whole or part of which is within the division, for which the court is held, such reasonable share of the cost as shall be ordered by the Judge of the court to be paid and contributed by the last mentioned municipality, and in every such case the total cost shall be deemed to be \$5 for every day on which the court is held. 10 Edw. VII. c. 32, s. 13.

Use of Court
House.

14. The sittings of the Court in a county town may be held in the Court House. 10 Edw. VII. c. 32, s. 14.

Board for
determining
the number
and limits of
divisions.

15.—(1) In a county the Judge of the county court, the Sheriff, the Warden and the Inspector, and in a Provisional Judicial District the Judge of the District Court, the Sheriff and the Inspector shall be a board who may appoint and alter the number and limits of the divisions, and shall number the divisions beginning at number 1.

Board in pro-
visional
county.

(2) In a provisional county the Judge of the county court and the sheriff of the county of which the provisional county

forms a part for judicial purposes, the Inspector and the Warden of the provisional county shall constitute the board.

(3) No resolution or order altering the number or limits of the divisions or any of them shall be made, except at a meeting called for that purpose, of which four weeks' notice shall be given by publication in a newspaper published in the division affected, or if no newspaper is published there, then in a newspaper published in the county or district town of the county or district in which the division affected is situate.

Meeting of Board.

(4) No such resolution or order shall take effect until approved by the Lieutenant-Governor in Council nor until notice of such approval has been published in the *Ontario Gazette*.

When order of Board to take effect.

(5) An application to alter the limits of any division, or to establish a new division, may be made to the Judge of the county court in writing signed by the Reeve or other head of any municipality in the county, authorized by a resolution of the council in that behalf, or by a petition signed by at least twenty-five ratepayers of the municipality affected.

Application for change of boundaries.

(6) Upon receiving the application the Judge shall notify the other members of the board, and upon receiving notice the Inspector shall appoint a time and place for considering the application, of which four weeks' notice shall be given as provided by subsection 3, and at the meeting persons supporting or opposing the proposed change shall be heard if they so desire, and the board shall consider and dispose of the whole matter.

Procedure upon application.

(7) The Inspector shall keep a record of the proceedings of the board and shall send a copy of it to the Clerk of the Peace after each meeting. 10 Edw. VII. c. 32, s. 15.

Record of proceedings.

16. Actions and judgments in any court, the number or limits of which are changed, shall continue to be actions and judgments therein, but the Judge may transfer any such action or judgment to any other court, and when so transferred the same shall be an action or judgment of such other court. 10 Edw. VII. c. 32, s. 16.

Actions and judgments continued when transferred.

17. The Clerk of the Peace, in a book to be kept by him, shall record the divisions declared and appointed, and the times and places of holding the courts, and the alterations made therein, and he shall transmit to the Inspector a copy of the record. 10 Edw. VII. c. 32, s. 17.

Clerks of the Peace to record time and place for holding Courts.

18.—(1) Where a union of counties is dissolved or a county is separated from a union of counties:—

Actions where united counties are dissolved.

(a) The courts of divisions which were wholly within the senior county or remaining counties and those which were wholly within the junior or separated

county shall continue to be courts of the senior county or remaining counties and of the junior or separated county respectively, and all actions and judgments therein shall continue to be actions and judgments in such courts until altered by the board.

(b) Actions and judgments in courts or divisions the limits of which were partly within the senior county or remaining counties and partly within the junior or separated county, shall continue to be actions and judgments of such courts until transferred to some other court in accordance with this Act.

Fixing number and limits of courts in a new county.

(2) The Lieutenant-Governor in Council may in the proclamation establishing a new county, or in a subsequent proclamation, to take effect in either case from a day to be named therein, fix and determine the number and limits of the courts for the new county, subject to be thereafter altered by the board, and may by the proclamation direct that actions and judgments in any court shall become actions and judgments in any other court and thereupon the same shall become actions and judgments of and shall be continued in such last mentioned court.

Writs and documents to be delivered up.

(3) Where an action or judgment in any court is transferred to another court the clerk or other officer of the court who holds any writ or document appertaining to such court or the business thereof shall deliver up the same to such person as the Judge directs.

Power of board as to regulation of limits on separation of a county.

(4) If the Lieutenant-Governor does not by proclamation fix and determine the number and limits of the divisions for the new county, the board shall, within three months after the issuing of the proclamation for establishing the new county, at a meeting to be called for the purpose or at an adjourned meeting, appoint the number and limits of the divisions for the county and the time when such appointment shall take effect. 10 Edw. VII. c. 32, s. 18.

THE JUDGE.

Who to preside.

19.—(1) The courts shall be presided over by the Judge or the Junior Judge or by the Deputy Judge.

Junior Judge to hold Division Courts.

(2) The Junior Judge shall preside over the Courts of the county, subject to any other arrangements from time to time made with the Judge of the county court or, in the County of York, by a majority of the Judges.

Senior Judge to hold Division Courts when expedient.

(3) The appointment of a Junior Judge shall not prevent or excuse the Judge from presiding at any of the courts within his county when the public interests require it. 10 Edw. VII. c. 32, s. 19.

20.—(1) The Judge may appoint a barrister to act as his deputy; and the barrister so appointed shall have all the powers and privileges vested in and be subject to all the duties imposed by law upon the Judge.

Who to preside in case of illness or absence of Judge.

(2) The Judge shall forthwith send to the Provincial Secretary notice of the appointment, specifying the name and residence of the barrister so appointed and the cause of his appointment.

Provincial Secretary to be notified of appointment of Deputy.

(3) No such appointment shall be continued for more than one month, and in case the Lieutenant-Governor in Council disapproves of the appointment, he may annul the same. 10 Edw. VII. c. 32, s. 20.

Duration of appointment.

21. If the Judge does not open court on the day appointed for that purpose, the clerk shall, after four o'clock in the afternoon, adjourn the court to an hour on the following day, to be named by him, and so from day to day, adjourning over any Sunday or holiday, until the Judge arrives to open Court, or until other directions are received from him. 10 Edw. VII. c. 32, s. 21.

Adjournment of Court if Judge does not arrive in time.

CLERKS AND BAILIFFS, ETC.

22. For every court there shall be a clerk and a bailiff or bailiffs, who shall be appointed by the Lieutenant-Governor, and all clerks and bailiffs heretofore or hereafter appointed shall hold office during the pleasure of the Lieutenant-Governor. 10 Edw. VII. c. 32, s. 22.

Every court to have clerk and bailiffs.

Tenure of office of Division Court officials.

23. A clerk shall not practise as a barrister or solicitor. 10 Edw. VII. c. 32, s. 23.

Clerk not to practise as barrister, etc.

24.—(1) It shall be the duty of the Judge to see that the officers of his courts perform their duties, and to examine into complaints against them.

Duty of judges as to officers.

(2) The Judge may for any cause suspend a clerk or bailiff, and in case of suspension shall forthwith report the same and the cause thereof to the Inspector, and if a vacancy occurs in the office of clerk or bailiff, the Judge shall forthwith notify the Inspector. 10 Edw. VII. c. 32, s. 24.

Suspension of clerk or bailiff by Judge.

25.—(1) Leave of absence for a period not exceeding two months may be granted by the Inspector to a clerk or bailiff.

Leave of absence to clerks or bailiffs.

(2) With the approval of the Judge, when prevented from acting by illness or accident, and with the approval of the Inspector, during absence on leave, the clerk or bailiff may appoint a deputy to act for him, with all his powers and privileges and subject to like duties, and the clerk and his sureties shall be jointly and severally responsible for all the acts and omissions of his deputy; and the bailiff and his sureties shall

When Clerk may appoint deputy.

be jointly and severally responsible for all the acts and omissions of his deputy. 10 Edw. VII. c. 32, s. 25.

Clerks and bailiffs to give security.
Rev. Stat. c. 15.

26. Subject to the provisions of *The Public Officers Act*, and of section 33 of this Act, every clerk and bailiff shall give security by a covenant, Form I, with such and as many sureties, being freeholders and residents within the county, and in such sums as the Judge directs and under his hand approves and declares sufficient, but the Lieutenant-Governor in Council may increase or diminish the sum or sums for which any clerk or bailiff heretofore, or who may hereafter be appointed, shall be required to give security. 10 Edw. VII. c. 32, s. 26.

Before clerk or bailiff enters on his duties, covenant to be filed with Clerk of the Peace.

27.—(1) Before a clerk or bailiff enters upon the duties of his office, the covenant of himself and his sureties, approved as aforesaid, shall be filed in the office of the Clerk of the Peace of the county in which the division is situate; and, for filing the same and granting a certificate thereof, the Clerk of the Peace shall be entitled to receive from the clerk or bailiff a fee of \$1.

Renewal of clerks' and bailiffs' covenants.

(2) Where a covenant requires periodical renewal, the renewal receipt shall be filed with the Clerk of the Peace in whose office the covenant has been filed, and shall be attached to the covenant.

Fee for filing.

(3) The Clerk of the Peace, for receiving and filing the receipt, shall be entitled to receive from the clerk or bailiff a fee of fifty cents. 10 Edw. VII. c. 32, s. 27.

Covenant to be available to suitors, etc.

28. The covenant shall enure to the benefit of and may be sued upon in any court of competent jurisdiction by any person suffering damages by the default, breach of duty or misconduct of the clerk or bailiff. 10 Edw. VII. c. 32, s. 28.

Certified copy of covenant to be received as evidence.

29. A copy of the covenant, certified by the Clerk of the Peace, shall be received in all courts as sufficient evidence of the due execution, and of the contents thereof, without further proof. 10 Edw. VII. c. 32, s. 29.

Entries of clerk or bailiff evidence against surety.

30.—(1) In an action against a surety of a clerk or bailiff, the entries in the books kept by such clerk or bailiff shall be *prima facie* evidence against the surety.

Interpretation of "clerk or bailiff."

(2) For the purpose of this section the words "clerk or bailiff" shall include a person who has ceased to be a clerk or a bailiff, as the case may be. 10 Edw. VII. c. 32, s. 30.

If surety dies, etc., a new surety to be furnished.

31. If a surety dies, becomes resident out of Ontario, or insolvent, the clerk or bailiff shall, within one month after such death, departure or insolvency, give a new security,

in the manner hereinbefore provided, under penalty of forfeiture of his office. 10 Edw. VII. c. 32, s. 31.

32.—(1) A surety who intends to withdraw from his suretyship may give notice in writing of his intention to the clerk or bailiff, as the case may be, and to the Judge, which may be served personally or left with a grown up person at the office or place of residence of the person to whom it is addressed, or mailed by registered post to such person at his usual post office address.

Procedure where sureties of clerk or bailiff discontinue suretyship.

(2) The Judge receiving the notice shall forthwith notify the clerk or bailiff who shall under penalty of forfeiture of his office, in addition to the suspension hereinafter mentioned, furnish the covenant of a new surety in lieu of the surety so giving notice, and shall procure the new covenant to be approved by such Judge and filed within one month after the notices have been given to him and to the Judge.

Judge to notify clerk or bailiff.

(3) If the covenant is not so approved and filed, the Judge shall forthwith suspend the clerk or bailiff and report the suspension and the cause thereof to the Inspector, and all accruing responsibility of the surety giving the notice shall cease from and after the expiration of five weeks from the day on which the last of such notices was given.

If security not renewed Judge to suspend clerk or bailiff.

(4) Nothing done under the provisions of this section shall discharge or exonerate any of the parties to the former covenant from liability on account of any matter done or omitted prior to the approval and filing of the new covenant or the expiration of five weeks. 10 Edw. VII. c. 32, s. 32.

Former sureties not released.

33.—(1) Subject to the approval of the Lieutenant-Governor in Council and to any regulations made by him, the Inspector may from time to time enter into agreements with any company or corporation empowered to make such agreements for insuring or guaranteeing the integrity and faithful accounting and performance of the duty of any clerk or bailiff named in the agreement or in any schedule thereto or whose name is subsequently added to the schedule under the terms of any Order-in-Council and agreement, and every such agreement shall enure to the benefit of the same persons, and shall be enforceable in the same manner as a covenant entered into under section 26.

Guaranty companies as security for Division Court clerks and bailiffs.

(2) The amount of the security to be furnished shall be determined by the Judge.

Amount of security.

(3) Where security is furnished under the provisions of this section, the Inspector shall give to the clerk or bailiff a certificate thereof, which the clerk or bailiff shall file in the office of the Clerk of the Peace, and the filing of the certificate shall have the same effect as the filing of a covenant as provided by subsection 1 of section 27. 10 Edw. VII. c. 32, s. 33.

Certificate to be filed in office of clerk of the peace.

Clerk's Duties.

Clerk to issue summonses and furnish copies etc.

34. The clerk shall issue all summonses and shall make copies thereof with the notices thereon, according to the prescribed form, and, except as otherwise provided by this Act, shall deliver the same to the bailiff for service. 10 Edw. VII. c. 32, s. 34.

Clerk to keep a record of process.

35. The clerk shall cause a note of all summonses, notices, orders, judgments, warrants, executions and returns thereto, to be entered in a book to be kept in his office, and shall sign his name on every page of the book; and the signed entries, or a copy thereof certified as a true copy by the clerk, shall be sufficient evidence of such entries and of the proceedings referred to therein, without further proof. 10 Edw. VII. c. 32, s. 35.

Books to be kept by Clerks.

36.—(1) A Procedure Book, Form 2, and a Foreign Procedure Book, Form 3, shall be kept by the clerk.

When county to provide books and forms.

(2) Where the fees and emoluments earned by him are less than \$500 a year the costs of all forms and books required by this Act to be kept by the clerk or bailiff shall be repaid to him by the treasurer of the county. 10 Edw. VII. c. 32, s. 36; 3-4 Geo. V. c. 18, s. 14 (1).

Forwarding summonses for service in other divisions.

37. The clerk, when required, shall forward the summons and copies for service to the clerk of any other court who shall receive and deliver them to the bailiff for service, and when returned shall send the summons to the clerk from whom it was received, and shall enter the proceedings in the Foreign Procedure Book. 10 Edw. VII. c. 32, s. 37.

Clerks to issue executions, tax costs and keep account of fines, etc.

38. The clerk shall issue all warrants and executions; and shall tax costs, subject to revision by the Judge, and shall keep an account of all fines payable or paid into court, and of all suitors' money paid into and out of court, and shall enter an account of all such fines and money in a book to be kept by him for that purpose, which shall be open to all persons desirous of searching the same, and shall at all times be accessible to the Judge and the Inspector. 10 Edw. VII. c. 32, s. 38.

Fines and penalties to be paid to Clerk of Peace.

39. The money arising from any penalty, forfeiture or fine imposed by or under authority of this Act, not directed to be otherwise applied, shall be paid to the clerk and shall be paid by him to the Clerk of the Peace, to be paid over to the Treasurer of Ontario. 10 Edw. VII. c. 32, s. 39.

Clerks to deliver to Clerk of Peace a verified account of fines

40. The clerk shall, at least once in every three months and oftener if required by the Clerk of the Peace, deliver to him a full account in writing verified by affidavit of all

finer levied, accounting for and deducting the reasonable expenses of levying the same, and any allowance which the Judge may make out of such fines in pursuance of the power hereinafter given. 10 Edw. VII. c. 32, s. 40.

41. The clerk when required by the Judge shall furnish him with a full account in writing, verified by affidavit, of the money paid into or out of the court under orders, judgments or process of the court, and of the balance in court belonging to suitors or others. 10 Edw. VII. c. 32, s. 41.

And furnish Judge with a verified account of moneys paid in and out of Court.

42.—(1) Immediately after the receipt of any sum of money for any person, the clerk shall forward a notice thereof by registered post, to the person entitled to receive the same; and shall obtain and file among the papers in the action the post office certificate of the registration, and shall deduct the postage from the money in his hands, but shall charge no fee for the notice.

Clerk to mail notice of payment of money.
Registration certificate to be with papers.

(2) The absence of the certificate of registration from among the papers in the action shall be *prima facie* evidence against the clerk that the notice has not been forwarded. 10 Edw. VII. c. 32, s. 42.

Effect of absence of certificate.

43.—(1) The clerk shall annually, in the month of January, make out a correct statement of all sums of money belonging to suitors or others which have been paid into court and have remained unclaimed for six years before the last day of the month of December then last past, specifying the names of the persons for whom or on whose account the same were so paid.

Clerk annually to make list of suitors' money in court for 6 years.

(2) The clerk shall keep one copy of the statement posted up in his office and another copy in some conspicuous part of the Court House or place where the court is held, and copies shall also be sent to the Treasurer of Ontario and the Inspector.

List to be put up in court room and in Clerk's office and sent to Provincial Treasurer and Inspector.

(3) All such sums shall form part of the Consolidated Revenue Fund, and shall be forthwith paid over by the clerk or officer holding the same to the Clerk of the Peace of his county, to be paid over to the Treasurer of Ontario; and, except by leave of the Lieutenant-Governor in Council, no person shall be entitled to claim any such sum which has remained unclaimed for six years.

Unclaimed moneys to be paid over to Clerk of Peace and by him to Treasurer of Ontario.

(4) The time during which the person entitled to claim the money was an infant or of unsound mind, or out of Ontario, shall not be taken into account in computing the six years. 10 Edw. VII. c. 32, s. 43.

Claims of persons under disability not to be prejudicial.

Disposal of Books and Papers when Clerk or Bailiff changed.

Upon resignation, removal or death of clerk, Clerk of Peace to become possessed of papers.

44. All accounts, money, books, papers, documents, and other things in the possession of a clerk or bailiff by virtue of or appertaining to his office, shall, upon his death, resignation, or removal, immediately become the property of the Clerk of the Peace, who shall hold the same until the appointment of another clerk or bailiff, to whom he shall deliver over the same, when security has been furnished on behalf of such clerk or bailiff. 10 Edw. VII. c. 32, s. 44.

Clerk of Peace to act as clerk when office of clerk is vacant.

45. Upon the death, resignation, suspension, or removal of the clerk, the Clerk of the Peace shall be the clerk until a successor is appointed or the suspension is removed; and the Clerk of the Peace shall be paid by the corporation of the county for his services in taking over the office the sum of \$5 together with actual disbursements. 10 Edw. VII. c. 32, s. 45; 2 Geo. V. c. 17, s. 14 (1).

Duties of Bailiffs.

Bailiffs to serve process.

46. The bailiff shall promptly serve and execute all summonses, orders, warrants, and executions delivered to him by the clerk, and shall so soon as served or executed return the same to the clerk; but, subject to the provisions of section 72, he shall not be required to travel beyond the limits of his division, or be allowed to charge mileage for any distance beyond the limits of the county in which is situated the division for the court of which he is bailiff. 10 Edw. VII. c. 32, s. 46.

Fees of Clerks and Bailiffs, etc.

Clerk and Bailiffs to be paid by fees.

47.—(1) The clerk and the bailiff shall be paid by fees, as provided and allowed by the general rules or orders heretofore in force or hereafter to be made by the Board of County Judges, and approved under the provisions of this Act.

Table of fees to be posted up in clerk's office. Fees of appraisers.

(2) A table of the fees shall be kept posted up in some conspicuous place in the office of the clerk.

(3) Until otherwise provided by general rule or order, the fees to be taken and received by appraisers shall be as follows:—

To each Appraiser, during the time actually employed in appraising goods (to be paid in first instance by the plaintiff and allowed as costs in the cause)..... One dollar per day.

10 Edw. VII. c. 32, s. 47.

Cases where amount involved not more than \$10.

48.—(1) Where the claim sued for, exclusive of interest and costs, does not exceed \$10, the tariff of clerk's or bailiff's fees shall not apply, except the fees for mileage to a bailiff,

the fees for enforcing the warrant of attachment, warrant against the body or summons in replevin, and the fee allowed to the clerk for receiving papers from another division for service, entering the same, handing the same to the bailiff and receiving and entering his return.

(2) The fees taxable to the clerk and bailiff in an action in which the sum sued for as aforesaid does not exceed \$10 shall, except as hereinbefore provided, be as follows:—

Fees of Clerks
and Bailiffs.

To the clerk for any and all services rendered by him as such clerk from the time of entering the action or suing out an interpleader summons up to and including the entering of final judgment or final order on any such judgment or summons, in case the action proceeds to Judgment, or final order..... \$1.25

In case the action does not proceed to judgment or final order, the fees heretofore or that may hereafter be payable, but not exceeding in the whole the said sum.

For issuing writ of execution, warrant of attachment or warrant for arrest of delinquent and entering the return thereto50

To the bailiff for all services rendered by him as such bailiff in serving the summons and making his return thereof to the clerk of the court or any other service that may be necessary before judgment is entered by the clerk or pronounced by the Judge, mileage excepted50

For enforcing writ of execution, schedule of property seized or attached, bond where necessary acts done by him after seizure, mileage excepted, if money made or case settled after levy 1.00

Necessary disbursements incurred in the care and removal of property shall be allowed, to be first allowed by the clerk subject to the approval of the Judge.
10 Edw. VII. c. 32, s. 48.

49.—(1) The fees upon every proceeding shall be paid in the first instance, and before it is taken, by the party on whose behalf the proceeding is taken.

By whom
fees to be
paid in first
instance.

(2) If the fees are not so paid, payment may, by summary order of the Judge, be enforced by execution in like manner as a judgment of the court. 10 Edw. VII. c. 32, s. 49.

How enforced.

Bailiff's fees to be paid to Clerk when execution issues.

50. At the time of the issue of any process or execution the bailiff's fees thereon shall be paid to the clerk and shall be paid over to the bailiff, upon the return of the execution, and not before; but if the bailiff does not become entitled to any part, or becomes entitled to a part only of such fees, the whole or the surplus, as the case may be, shall be repaid by the clerk to the person from whom the fees were received. 10 Edw. VII. c. 32, s. 50.

Bailiff to forfeit fees if he neglects to return process.

51. If the bailiff neglects to return any process or execution within the time required by law he shall for such neglect forfeit his fees thereon, and all fees so forfeited shall be held to have been received by the clerk, who shall keep a special account thereof, and account for and pay over the same to the Clerk of the Peace, to be paid to the Treasurer of Ontario, to form part of the Consolidated Revenue Fund. 10 Edw. VII. c. 32, s. 51.

Clerk or Bailiff not to accept extra fees.

52. A clerk or bailiff shall not directly or indirectly take or receive any commission, charge, fee or reward for or in connection with the collection of any debt or claim which has been or may or can be sued in the court for which he is clerk or bailiff, except such fees as are provided by a tariff of fees under this Act. 10 Edw. VII. c. 32, s. 52.

INSPECTION.

Appointment of Inspector. Duties.

53. The Lieutenant-Governor in Council may appoint an Inspector of Division Courts, whose duty shall be:

Inspection of offices.

(a) To make a personal inspection of every Division Court and of the books and papers thereof;

Books, etc.

(b) To see that the proper books are provided, that they are in good order and condition, that the proper entries and records are made therein in a correct manner, at suitable times, and in proper form and order, and that the papers and documents are properly classified and preserved;

Officers' duties.

(c) To see that the duties of the officers of the courts are efficiently performed and that the office is at all times duly attended by the clerk;

Lawful fees.

(d) To see that lawful fees only are taxed or allowed as costs;

Security by clerks and bailiffs.

(e) To see that proper security is furnished and maintained on behalf of every clerk and bailiff;

Destruction of useless papers.

(f) When authorized by the Lieutenant-Governor in Council so to do, to direct that any papers or documents which it is unnecessary to preserve be destroyed;

Report to Lieutenant-Governor.

(g) To report upon all such matters to the Lieutenant-Governor. 10 Edw. VII. c. 32, s. 53.

54. Where the Inspector considers it expedient to institute an inquiry into the conduct of a clerk or bailiff he may require him and any other person to give evidence on oath, and for that purpose shall have the same power as any court has in civil cases to summon such officer or other person to attend as a witness, to enforce his attendance and to compel him to produce books and documents and to give evidence. 10 Edw. VII. c. 32, s. 54.

Power of inspector in making inquiry into conduct of officers.

55. Every clerk and bailiff shall, as often as required by the Inspector, produce at the clerk's office, for examination and inspection, all books and documents required to be kept by him, and shall report to the Inspector concerning such matters as the Inspector shall require. 10 Edw. VII. c. 32, s. 55.

Books, etc., to be produced for inspection.

56. Every clerk and bailiff, within five days after his appointment, shall inform the Inspector of his appointment, of his full name and post office address, and of the names of his sureties, their occupations, places of residence, and post office addresses. 10 Edw. VII. c. 32, s. 56.

Officers to inform Inspector of their appointment, etc.

57. When a clerk or bailiff has given new sureties, he shall immediately inform the Inspector of the change, giving the names of the sureties, their occupations, places of residence, and post office addresses. 10 Edw. VII. c. 32, s. 57.

Inspector to be informed of new sureties.

58. Every clerk and bailiff shall have and keep in his possession or custody the certificate of the Clerk of the Peace mentioned in section 27, and shall produce the same for the information of the Inspector when required so to do. 10 Edw. VII. c. 32, s. 58.

Officers to produce certificate of filing covenant, etc.

59. Every clerk shall, on or before the 15th day of January in each year, make a return, in such form and manner as the Lieutenant-Governor in Council shall prescribe, of the business of his office for the year which ended on the 31st day of December next preceding. 10 Edw. VII. c. 32, s. 59.

Clerk to make returns to Lieutenant-Governor.

60. Every clerk and bailiff shall keep a separate book in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, and shall on the 15th day of January, in every year, make a return under oath to the Inspector, showing the aggregate amount of fees, charges and emoluments which he became entitled to receive during the year which ended on the 31st day of December next preceding. 10 Edw. VII. c. 32, s. 60.

Clerks' and bailiffs' returns to Inspector.

JURISDICTION.

Cases in which
court has no
jurisdiction.

61. The court shall not have jurisdiction in

- (a) An action for the recovery of land, or an action in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise comes in question;
- (b) An action in which the validity of any devise, bequest, or limitation under any will or settlement is disputed;
- (c) An action for malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage;
- (d) An action against a Justice of the Peace for anything done by him in the execution of his office, if he objects thereto;
- (e) An action upon a judgment, or order of the Supreme Court or a County Court where execution may issue, upon or in respect thereof. 10 Edw. VII. c. 32, s. 61.

Cases in which
the court has
jurisdiction.

62.—(1) Save as otherwise provided by this Act, the court shall have jurisdiction in:

- (a) A personal action where the amount claimed does not exceed \$60;
- (b) A personal action if all the parties consent thereto in writing, and the amount claimed does not exceed \$100;
- (c) An action on a claim or demand of debt, account or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed \$100; provided that in the case of an unsettled account the whole account does not exceed \$600;
- (d) An action for the recovery of a debt or money demand where the amount claimed, exclusive of interest whether the interest is payable by contract or as damages, does not exceed \$200 and the amount claimed is
 - (i.) Ascertained by the signature of the defendant or of the person whom as executor or administrator he represents or—
 - (ii.) The balance of an amount not exceeding \$200, which amount is so ascertained or—

- (iii.) The balance of an amount so ascertained which did not exceed \$400 and the plaintiff abandons the excess over \$200.

An amount shall not be deemed to be so ascertained where it is necessary for the plaintiff to give other and extrinsic evidence beyond the production of a document and proof of the signature to it.

The jurisdiction conferred by this clause shall apply to claims and proceedings against an absconding debtor.

- (e) An action or contestation for the determination of the right of a creditor to rank upon an insolvent estate where the claim of the creditor does not exceed \$60.

(2) Claims combining

- (a) Causes of action in respect of which the jurisdiction is by subsection 1 limited to \$60, hereinafter referred to as class (a);

Combining causes of action.

- (b) Causes of action in respect of which the jurisdiction is by subsection 1 limited to \$100, hereinafter referred to as class (b);

- (c) Causes of action in respect of which the jurisdiction is by subsection 1 limited to \$200, hereinafter referred to as class (c),

may be joined in one action; provided that the whole amount claimed in respect of class (a) does not exceed \$60; and that the whole amount claimed in respect of classes (a) and (b) combined, or in respect of class (b) where no claim is made in respect of class (a), does not exceed \$100, and that the whole amount claimed in respect of classes (a) and (c) or (b) and (c) combined, does not exceed \$200, and that in respect of classes (b) and (c) combined, the whole amount claimed in respect of class (b) does not exceed \$100.

- (3) The findings of the court upon claims so joined shall be separate.

Separate findings on combined claims.

- (4) The court shall also have jurisdiction in actions of replevin, where the value of the goods or other property or effects distrained, taken or detained, does not exceed \$60, as provided in *The Replevin Act*.

Jurisdiction in replevin.

Rev. Stat. c. 69.

- (5) The court shall also have jurisdiction in actions between teachers and school boards as provided by *The High Schools Act*, *The Public Schools Act*, and *The Separate Schools Act*. 10 Edw. VII. c. 32, s. 62.

Actions between teachers and school boards.
Rev. Stat. cc. 266, 268, 270.

Judge to try.

63. Except in actions in which a jury is demanded, as hereinafter provided, the Judge shall hear and determine in a summary way all questions of law and fact and may make such order or judgment as appears to him just and agreeable to equity and good conscience, which shall be final and conclusive between the parties, except as herein otherwise provided. 10 Edw. VII. c. 32, s. 63.

Judge may order payment in money, although contract not for payment in money.

64. Upon a contract for the payment of a sum certain in labour or in any kind of goods or commodities or in any other manner than in money, the Judge may give judgment for the amount in money as if the contract had been so expressed, if the goods and commodities have not been delivered or the labour or other thing performed in accordance with the contract. 10 Edw. VII. c. 32, s. 64.

Powers of Courts.

65.—(1) The court in actions otherwise within its jurisdiction shall have power to grant relief, redress, or remedy, or combination of remedies, either absolute or conditional, including the power to relieve against penalties and forfeitures, in as full and ample a manner as might be done in the like case by the Supreme Court.

Courts not to grant injunctions or receiver.

(2) Nothing in this section shall confer jurisdiction to grant an injunction or to appoint a receiver. 10 Edw. VII. c. 32, s. 65.

Minors may sue for wages.

66. A minor may sue for any sum not exceeding \$100 due to him for wages, or for work or services, as if he were of full age. 10 Edw. VII. c. 32, s. 66.

Causes of action not to be divided.

67.—(1) A cause of action shall not be divided into two or more actions for the purpose of bringing the same within the jurisdiction of the court.

Principal and interest may be sued for separately.

(2) Where a sum for principal, and also a sum for interest, is due and payable to the same person upon a mortgage, bill, note, bond or other instrument, he may notwithstanding anything in this section contained, but subject to the other provisions of this Act, sue separately for every sum so due. 10 Edw. VII. c. 32, s. 67.

Judgment to be full discharge.

68. A judgment in an action brought for the balance of an account, or for a part of a claim, where the residue is abandoned to bring the claim within the jurisdiction of the court, shall be a full discharge of all demands in respect of the account for the balance of which such action was brought or for the whole claim, as the case may be. 10 Edw. VII. c. 32, s. 68.

Transfer of actions to Supreme Court.

69.—(1) Where it appears at any stage of an action otherwise of the proper competence of the court that the Court has not cognizance thereof on account of the title to land or any corporeal or incorporeal hereditament, or any

toll, custom or franchise coming in question, or the validity of a devise, bequest or limitation under a will or settlement being disputed, the action shall not on that account be dismissed, but a Judge of the Supreme Court, or the Judge of the court in which the action is pending, may order the same to be transferred to the Supreme Court upon such terms as to the payment of costs or otherwise as he may think fit, and thereafter the action shall proceed in the Supreme Court as if originally commenced therein, and as if the defendant had entered an appearance; but the Supreme Court or a Judge thereof may give such directions as to procedure as may be deemed proper.

(2) Where the order is made by a Judge of the Division Court an appeal shall lie therefrom to a Judge of the Supreme Court in Chambers who may rescind the order or vary the terms thereof. 10 Edw. VII. c. 32, s. 69.

Appeal from order.

70. If it appears to a Judge of the Supreme Court that an action is a fit one to be tried in the Supreme Court, he may order that it be transferred to the Supreme Court upon such terms, as to payment of costs or otherwise, as he may think fit. 10 Edw. VII. c. 32, s. 70.

Action may be removed into High Court in certain cases.

71.—(1) Where a defence or counter-claim involves matter beyond the jurisdiction of the court, the Judge may order that the whole case be transferred to the Supreme Court or to the County Court of the county within which the Division is situate.

Duty of court where defence or counter-claim involves matter beyond jurisdiction.

(2) If it appears that a defence or counterclaim is frivolous or vexatious, the Judge, instead of proceeding under subsection 1, may order that the defence or counterclaim be struck out, but an order made under this subsection shall not be a bar to an action by a defendant for the recovery of the claim which formed the subject matter of the set-off or counterclaim.

Frivolous defence.

(3) It shall not be necessary that any pleading be delivered into the court to which the action is transferred unless the court or Judge thereof so directs. 10 Edw. VII. c. 32, s. 71.

Pleadings.

PROCESS AND PROCEDURE.

Division in which action to be entered.

72.—(1) An action may be entered and tried

In what court actions may be entered and tried.

(a) In the court for the division in which the cause of action arose or in which the defendant, or any one of several defendants, resides or carries on business at the time the action is brought; or

(b) In the court the place of sitting whereof is the nearest to the residence of the defendant.

Place of trial in action for wages of woodman.

Interpretation of "woodman."

Provided, that any action for wages of a woodman may be entered and tried in the court holden for the division in which the contract of hiring was made, notwithstanding any stipulation in the contract of employment or otherwise. In this section "woodman" shall mean a person performing labour or services in connection with any logs or timber, and shall include cooks, blacksmiths, artisans and all others usually employed in connection with such labour or services.

Service of summons in such case.

Execution.

(2) In the cases provided for by clause (b) of subsection 1 and by subsection 2 of section 80, the summons may be served by a bailiff of the court out of which it issues, and upon judgment being recovered execution against the goods and chattels of the debtor, and all other process and proceedings to enforce payment of the judgment, may be issued to the bailiff of such court, and be executed and enforced by him in the county in which the debtor resides, as well as in the county in which the judgment was recovered. 10 Edw. VII. c. 32, s. 72.

When actions may be brought in other than the regular divisions.

73. If a person desires to bring an action in the court of a division other than as in the next preceding section mentioned, the Judge may by order authorize an action to be entered and tried in the court of any division in his county adjacent to the division in which the defendant or one of the defendants resides, whether such defendant resides in the county of the Judge granting the order or in an adjoining county. 10 Edw. VII c. 32, s. 73.

Effect of agreement as to place of trial.

74. No proviso, condition, stipulation, agreement or statement which provides for the place of trial of an action, matter or proceeding shall be of any force or effect where the defendant, within the time limited for disputing the plaintiff's claim or within such further time as the Judge shall allow, files with the clerk of the court in which the action was commenced a notice disputing the jurisdiction of the court and an affidavit of the defendant or his agent stating that in his belief there is a good defence to the action on the merits, and the division wherein the cause of action arose, or partly arose, and the division where the defendant resides. 10 Edw. VII. c. 32, s. 74; 1 Geo. V. c. 17, s. 38.

Actions when defendant resides out of the Province.

75.—(1) Where it is provided that a claim may be entered, or an action brought, or that a person may be sued in a Division Court, the action may be brought, notwithstanding that the residence of the defendant is, at the time of bringing the action, out of Ontario, and the action may be brought in the court of the division in which the cause of action arose or partly arose.

(2) The service of the summons may be made by a bailiff of the court out of which it issued or by any person who may, either before or after the service, be approved by the Judge or by the clerk, but such summons shall be served at least fifteen days before the return day thereof.

(3) The affidavit of service, if not made in Ontario, may be sworn before any officer or person having authority to administer oaths under *The Evidence Act*.

Service of
summons on
non-residents.

Proof of
service.

Rev. Stat.
c. 76.

(4) Where service of the summons has been effected out of Ontario, the Judge may allow, as costs in the action, a sum towards the expenses incurred in effecting service, not exceeding in the whole \$5. 10 Edw. VII. c. 32, s. 75.

Allowance for
service out of
Ontario.

76. Where the defendant is a corporation not having its head office in Ontario, and the cause of action arose partly in one division and partly in another, the plaintiff may bring his action in either division. 10 Edw. VII. c. 32, s. 76.

Where def-
endant is a
corporation
not having
head office
in Ontario.

77.—(1) Where the debt or money payable exceeds \$100, and is made payable by the contract of the parties at a place named therein, the action may be brought thereon in the court of the division in which the place of payment is situate, subject, however, to the action being transferred to the court of any division in which but for this section it might have been brought.

Place of trial
where amount
sued for
exceeds \$100.

(2) The Judge of the court in which the action is brought may, upon application of the defendant made within the time limited for disputing the plaintiff's claim, make an order transferring the action accordingly.

Changing
place of trial
in such cases.

(3) The application shall be supported by an affidavit of the applicant or his agent stating that the applicant intends to defend the action, that there is a good defence upon the merits, that the cause of action did not wholly arise in the division in which the action is brought, that the witnesses for the defence, or some of them, reside within the division in which the defendants, or one of them, resided or carried on business at the time the action was brought, and that the application is not made for the purpose of delay; and the dates of the next two sittings of the court to which it is sought to have the action transferred shall also be shown.

Affidavit in
support of
application.

(4) The order shall direct at what sittings of the court the action shall be tried, subject to all rights of postponement as in other cases, and shall be attached by the clerk to the summons and other proceedings in the action, and he shall forthwith transmit them to the clerk of the court to which the action is transferred, and enter a minute thereof in his procedure book.

Order and
papers to be
transmitted to
clerk.

To be entered
in procedure
book.

(5) Upon receipt of the order and other papers by the clerk of such last mentioned court, he shall enter the action and proceedings in his procedure book.

Style.

(6) All the papers and proceedings in the action thereafter shall be intituled and carried on as though the action had originally been entered in the last mentioned court.

Order to serve.

(7) The defendant shall forthwith serve a copy of the order upon the plaintiff or his agent. 10 Edw. VII. c. 32, s. 77.

Notice Where Jurisdiction Disputed.

Notice where
jurisdiction of
court disputed
to be given.

78. Where a defendant, or a garnishee intends to contest the territorial jurisdiction of the court, he shall leave with the clerk, within eight days after the day of service of the summons on him (where the service is required to be ten days before the return), or within twelve days after the day of such service (where the service is required to be fifteen or more days before the return), a notice in writing that he disputes the jurisdiction of the court, and the clerk shall forthwith give notice thereof to the plaintiff, or his agent in the same way as notice of defence is given, and in default of such notice, the jurisdiction shall be considered as established and determined, and all proceedings may thereafter be taken as fully and effectually as if the action had been properly entered or taken in such court. 10 Edw. VII. c. 32, s. 78.

When action
entered in
wrong Court.

79.—(1) If it appears that an action should have been entered in some other court of the same or some other county, it shall not fail for want of jurisdiction, but, on such terms as the Judge shall order, all the papers and proceedings in the action may be transferred to any court having jurisdiction in the premises, and shall become proceedings thereof as if the action had been entered therein, and shall be continued as if it had originally been entered in the last mentioned court.

Clerk to place
on list and
notify parties.

(2) The clerk of the court, to which the proceedings have been transferred, shall place the action on the list for trial at the next sittings of his court which commences six clear days or more after he receives the papers, and he shall forthwith after receiving the papers notify the parties or their agents by registered post of the date, hour and place of the sittings, and the clerk issuing the summons shall certify in detail to the court to which the action is transferred all the costs incurred up to the date of the transfer. 10 Edw. VII. c. 32, s. 79.

Actions by
and against
clerks and
bailiffs.

80.—(1) A clerk or bailiff shall not sue or be sued in the court of which he is clerk or bailiff.

(2) A clerk or bailiff shall sue or be sued separately or ^{Idem.} jointly with another person in the court of any next adjoining division whether in the same or another county.

(3) Nothing in this section shall prevent proceedings from ^{Commenced before appointment.} being continued in the court in which the action was brought, where it was commenced before the appointment of such clerk or bailiff. 10 Edw. VII. c. 32, s. 80.

81. An action by or against a Judge may be brought in ^{Action by or against Judge.} any court of a county adjoining that in which he resides. 10 Edw. VII. c. 32, s. 81.

82. Unless otherwise provided, every notice required by ^{Notices to be in writing.} this Act shall be in writing. 10 Edw. VII. c. 32, s. 82.

Entry of Claim, Service, etc.

83.—(1) The plaintiff shall enter his claim with the clerk ^{Entry of claim with clerk.} and at the same time shall deliver to him a copy (and if necessary, copies) of his account, claim or demand in writing in detail (and in case of tort, particulars of his demand) and each claim shall be numbered according to the order in which it is entered, and a summons in the prescribed form shall be issued, bearing the number of the claim on the margin thereof, and on the trial no evidence shall be given of any cause of action except such as is contained in the claim so entered.

(2) In an action on a promissory note, bill of exchange ^{Promissory note, etc., to be filed before judgment.} or cheque, the same shall be filed with the clerk before judgment, unless otherwise ordered, or unless it be shown that the note, bill or cheque is lost, or that it cannot for some other reason be produced. 10 Edw. VII. c. 32, s. 83.

84. The clerk shall annex the plaintiff's account or particulars to the summons, and shall deliver copies of the ^{What to accompany summons.} summons and account or particulars to the proper person to serve the same. 10 Edw. VII. c. 32, s. 84.

85. The summons, with a copy of the account or particulars attached, shall be served ten days at least before the ^{When summons to be served.} return day thereof, and, where a defendant resides out of ^{When defendant resides out of county.} the county in which the action is brought, fifteen days at least before the return day thereof. 10 Edw. VII. c. 32, s. 85.

86. There shall be endorsed upon the summons a notice ^{Endorsement upon summons.} informing the defendant that any application to change the place of trial must be made within the time limited for disputing the plaintiff's claim. 10 Edw. VII. c. 32, s. 86.

When service to be personal or otherwise.

87. Where the amount of the claim exceeds \$15 the service shall be personal, and where the amount does not exceed \$15 the service may be on the defendant, his wife or servant, or on a grown up inmate of the defendant's dwelling-house or usual place of abode or business. 10 Edw. VII. c. 32, s. 87.

General Provisions.

Substitutional service.

88. The Judge may make an order for substitutional service or for service by advertisement or otherwise. 10 Edw. VII. c. 32, s. 88.

Service of process, etc., on corporations.

89.—(1) Every summons or process against a corporation, firm or individual whose chief place of business is not within Ontario, and all subsequent papers and proceedings in the action, may be served on the agent of the corporation, firm or individual whose office or place of business as such agent is either within the division from the court of which the summons or process issued, or is nearest thereto.

Interpretation "Agent."

(2) For the purpose of this section the word "agent" shall include,

- (a) In the case of a railway company a station-master having charge of a station of the company;
 - (b) In the case of a telegraph company, a person having charge of a telegraph office of the company; and
 - (c) In the case of an express company, a person having charge of an express office of the company.
- 10 Edw. VII. c. 32, s. 89.

Postage.

90. The postage on papers required to be served out of the division, and sent by mail for service, shall be costs in the cause. 10 Edw. VII. c. 32, s. 90.

Bailiff *pro tempore*.

91.—(1) Where there is no bailiff or the bailiff is under suspension, the Judge may appoint a bailiff *pro tempore* to perform:

- (a) All the duties of bailiff; or
- (b) Any particular duty.

Clerk may act as bailiff.

(2) The clerk may also exercise the powers conferred by clause (b).

Duties of bailiff *pro tempore*.

(3) The person appointed under clause (a) of subsection 1 shall perform all the duties required to be performed by a bailiff. 10 Edw. VII. c. 32, s. 91.

Clerk to prepare affidavits of service, etc.

92. The clerk shall prepare an affidavit of service of every summons issued out of his court, or sent to him for

service, stating how the same was served, the day of service and the distance the bailiff necessarily travelled to effect service, and the affidavit shall be annexed to or indorsed on the summons and shall be sworn to by the bailiff; but the Judge may require the bailiff to be sworn in his presence, and to answer such questions as may be put to him touching any service or mileage. 10 Edw. VII. c. 32, s. 92.

Partners.

93.—(1) In case of a debt or demand against two or more persons, partners in trade or otherwise jointly liable, who reside in different divisions, or of whom one or more cannot be found, one or more of such persons may be sued or served with process, and judgment may be obtained and execution issued against him or them, notwithstanding that others jointly liable have been sued or served without prejudice to the right of the person against whom execution issues to demand contribution from any other person jointly liable with him. One or more of persons jointly liable may be sued.

(2) Where a judgment has been obtained against one or more of several partners under the provisions of subsection 1, and the Judge certifies that the demand proved was a partnership transaction, the bailiff, may, under the execution, seize and sell the property of the firm, as well as that of any defendant who has been served. Bailiff may seize property of firm on certificate of Judge.

(3) Two or more persons claiming or being liable as co-partners may sue or be sued in the name of the firm of which such persons were co-partners at the time of the accruing of the cause of action. Service on parties added.

(4) Where partners are sued in the name of the firm, the summons may be served on one or more of them or at the principal place within Ontario of the business of the partnership or upon any person having control of the partnership business there and, subject to the provisions of subsection 6 and 7, such service shall be deemed good service upon the firm, and the affidavit of the service of the summons shall state the name of the person served. Partners sued in name of firm.

(5) Any party may, at any time before or after judgment, apply for an order directing a statement of the names and addresses of the persons who are co-partners in any firm which is a party to the action by the firm name, to be furnished in such manner as the Judge may direct. Order to furnish names and addresses.

(6) In the case of a partnership which to the knowledge of the plaintiff has been dissolved before action the summons shall be served upon every person within Ontario sought to be made liable. When partnership dissolved.

Notice of capacity in which person served.

(7) Where a summons is issued against a firm and is served as directed by this section, every person upon whom it is served shall be informed by notice given at the time of service whether he is served as a partner or as a person having control or management of the partnership business or in both characters, and in default of such notice the person served shall be deemed to be served as a partner.

Attachment of debts due by firm.

(8) Debts owing from a firm carrying on business within Ontario may be attached under section 146, although one or more members of the firm may be resident out of Ontario, provided that some person having the control or management of the partnership business or a member of the firm within Ontario is served with the attaching order. 10 Edw. VII. c. 32, s. 93.

Execution against partners.

94.—(1) Where a judgment is against a firm, subject to the provisions of section 95, execution may issue against the property of

- (a) The partnership;
- (b) Any person who has admitted in the notice of dispute or defence filed that he is a partner, or who has been adjudged a partner;
- (c) Any person who has been individually served as a partner with a copy of the summons and who has not filed a notice of dispute or defence.

Leave to issue execution against other members.

(2) If the party who has obtained a judgment claims to be entitled to issue execution against any other person as being a member of the firm, he may apply for leave to do so, and the Judge may give such leave if the liability be not disputed, or, if disputed, after the liability has been determined in such manner as he may direct. 10 Edw. VII. c. 32, s. 94.

Effect of judgment against firm.

95. Except as against the property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of Ontario when the summons was issued, and who has not entered a defence to the action, unless he has been made a party under section 97, or has been served within Ontario after the summons was issued. 10 Edw. VII. c. 32, s. 95.

Persons carrying on business in Ontario under another name.

96.—(1) A person, whether or not a British subject, and whether residing in or out of Ontario, carrying on business within Ontario under a name or style other than his own name, may be sued in such name or style.

Leave to issue not required.

(2) Leave shall not be necessary to issue the summons.

Service of summons.

(3) The summons may be served upon the person so carrying on business if he be within Ontario, or at his place of

business within Ontario, or, if there are several such places at the place in or nearest to the county in which the cause of action arose, upon any person having the control or management of the business there, and such service shall be equivalent to personal service on the person so sued.

(4) The person upon whom the summons is served shall be informed by notice given at the time of service whether he is served as the person carrying on the business or as the person having the control or management of it or in both characters, and in default of such notice he shall be deemed to be served as the person carrying on the business.

Notice of character in which person served.

(5) Any party may, at any time before or after judgment, apply for an order directing a statement of the name and address of the person who is, and of the person who, at the time of the accruing of the cause of action, was carrying on business under such name or style to be furnished in such manner as the Judge may direct.

Procuring name and address of person carrying on business.

(6) The person so sued shall enter a dispute in his own name, but all subsequent proceedings shall continue in such name or style.

Person served to appear in his own name.

(7) A person served as the person carrying on the business may enter a defence under protest, denying that he is the person so carrying on the business, but such defence shall not preclude the plaintiff from otherwise serving the person sued or from obtaining judgment in default of defence in the ordinary form by the person so sued.

Defence under protest.

(8) Where a summons is served under subsection 3 on a person having the control or management of but not carrying on the business, a dispute by him shall not be necessary.

When person served is not carrying on the business.

(9) A judgment or order in the action may be enforced by execution against

Enforcement of judgment, what property exigible.

(a) The property of the person so sued, used or employed in or in connection with the business and

(b) The property within Ontario of the person so sued if he has entered a defence in the action, or has been adjudged to be the person carrying on the business or has been personally served with the summons within Ontario and has failed to enter a defence.

(10) If the person so sued has not entered a dispute or has not been personally served, or has not been adjudged to be the person carrying on the business, the plaintiff may apply for leave to issue execution against the person within Ontario whom the plaintiff alleges to be the person carrying on the business, and the Judge may give such leave if the liability be not disputed, or, if disputed, after the liability

Issuing execution against person alleged to be carrying on the business.

has been determined in such manner as the Judge may direct. 10 Edw. VII. c. 32, s. 96.

Adding Parties.

Striking out
and adding
parties.

97.—(1) The Judge may at any stage of the proceedings, upon such terms as may appear to him to be just, order that the name of the plaintiff, defendant, or garnishee improperly joined be struck out, and that any person who ought to have been joined or whose presence is necessary in order to enable the Judge effectually and completely to adjudicate upon the questions involved in the action be added as plaintiff, defendant, or garnishee.

Substituting
or adding
plaintiff.

(2) Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Judge, if satisfied that it has been so commenced through a *bonâ fide* mistake and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff upon such terms as he may deem just.

Consent of
party added
required.

(3) No person shall be added or substituted as a plaintiff or as a next friend, unless his own consent in writing thereto be filed.

Service on
parties
added.

(4) A person who is added as a defendant or garnishee, shall be served with a copy of the summons, the original summons being first amended, and the proceedings against him shall be deemed to have been commenced from the date of the order making him a party; but if the application to add any person as a party defendant or garnishee be made at the trial, the Judge may make the order in a summary manner upon such terms as to him may seem just, and may dispense with the service of a copy of the summons if such person or his agent consents thereto. 10 Edw. VII. c. 32, s. 97.

Judgment by Default where Summons Specially Endorsed.

In proceedings
by special
summons final
judgment
entered by the
clerk when
claim in whole
or in part not
disputed, etc.

98.—(1) In actions for the recovery of a debt or money demand, where the particulars of claim, with reasonable certainty and detail, are endorsed on or attached to the summons, hereinafter called a special summons, and a copy of the summons and particulars, with a notice in the prescribed form, annexed to or endorsed on such copy has been duly served, then, unless the defendant has left with the clerk, within eight days after the day of service (where the service is required to be ten days before the return), or within twelve days after the day of service (where the service is required to be fifteen days before the return), a notice to the effect that he disputes the claim,

or some part, and how much thereof, final judgment may be entered by the clerk on the return of the summons, or at any time within one month therefrom, or, by order of the Judge, at any time thereafter for the amount claimed in the particulars, or so much thereof as has not been disputed, and execution may issue thereon without prejudice to the right of the plaintiff to proceed for the remainder of his claim.

(2) The judgment shall be in the prescribed form, but shall not be entered until the special summons and particulars with an affidavit of the due service of both have been filed. Summons, particulars and affidavit to be filed.

(3) The Judge may set aside such judgment and permit the case to be tried, on such terms as to him may seem just. Judge may set aside judgment.
10 Edw. VII. c. 32, s. 98.

99. Where proof is made by affidavit or otherwise of the service of a special summons, and of the particulars of the plaintiff's claim as required by section 100, and judgment has not been entered under the provisions of the said section, the Judge may, if the defendant does not in person or by agent appear in open court, as required by the summons, give judgment against him by default, without requiring proof of the plaintiff's claim. 10 Edw. VII. c. 32, s. 99. Judgment by default under s. 100, where final judgment not entered.

100.—(1) In any action commenced by special summons for the recovery of a debt or money demand of \$25 or upwards, the plaintiff, on an affidavit made by himself or any other person swearing positively to the facts and verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the action, and the reasons why immediate judgment should be granted, may concurrently with the service of the special summons, or at any subsequent time, serve the defendant with a notice of motion, returnable not less than four clear days after service, to show cause before the Judge why the plaintiff should not be at liberty to have final judgment entered by the clerk for the amount of the debt or money demand sought to be recovered, together with interest, if any, and costs. A copy of the affidavit shall be served with the notice of motion. The Judge thereupon, if the reasons for immediate judgment appear to be sufficient, unless the defendant or his agent by affidavit or otherwise satisfies him that the defendant has a good defence to the action on the merits, or discloses such facts as may be deemed sufficient to entitle him to defend the action, may make an order empowering the clerk to sign final judgment. Motion for judgment.

(2) The defendant may show cause by offering to bring into court the amount sought to be recovered, or by affidavit which shall state whether the defence he alleges goes to the How defendant may show cause.

whole or to part only, and if to part only, then to what part of the claim. The Judge may, if he thinks fit, order the defendant to attend and be examined upon oath, and to produce any books and documents, or copies thereof, or extracts therefrom.

Partial
defence.

Judgment
for part.

(3) If it appears that the defence applies only to a part of the claim, or that part of the claim is admitted to be due, the plaintiff shall be entitled to have final judgment entered forthwith for such part of his claim as the defence does not apply to or as is admitted to be due, subject to such terms, if any, as to suspending execution, payment of any amount levied, or any part thereof, into court by the bailiff, the taxation of costs or otherwise, as to the Judge may seem just; and the defendant may be allowed to defend as to the residue of the claim.

Where one
defendant has
good defence.

(4) If it appears to the Judge that a defendant has a good defence, or ought to be permitted to defend, and that any other defendant has not such defence, and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to have judgment entered against the latter, and may issue execution upon the judgment without prejudice to his right to proceed with his action against the former.

Terms upon
giving leave
to defend.

(5) Leave to defend may be given unconditionally, or subject to such terms as to giving security or otherwise, as to the Judge may seem just.

Setting aside
or varying
order.

(6) Within seven days after making the order, and upon good grounds being shown, the Judge may set aside or vary the order upon such terms as to him may seem just. 10 Edw. VII. c. 32, s. 100.

Leave to dis-
pute claim
at any
time before
judgment.

101. At any time before judgment is entered although the time for giving the notice disputing the plaintiff's claim has expired, the Judge, on sufficient grounds shown, and on such terms as to him may seem just, may give leave to the defendant to dispute the plaintiff's claim, in which case the notice disputing the claim shall immediately be left with the clerk, and also delivered to the plaintiff or sent to him by registered post. 10 Edw. VII. c. 32, s. 101.

Withdrawal
of defence.

102. A defendant who has filed a notice disputing the claim may, by notice to the clerk at least six days before the sittings at which the action may be tried, consent that judgment be entered against him for any amount, and the clerk shall immediately notify the plaintiff thereof by registered post, and thereupon the plaintiff shall be entitled to have judgment entered by the clerk as by default for such amount and the costs necessarily incurred. 10 Edw. VII. c. 32, s. 102.

103. Where a defendant or garnishee has given the clerk notice that he disputes the claim, or any other notice of which the plaintiff should be informed before the trial, or where it becomes the duty of the clerk to give notice to any party to an action of any defence, admission, Judge's order or other matter of which he should be notified before the trial, the notice shall state the place and time of the sittings of the court at which the action is to be tried. 10 Edw. VII. c. 32, s. 103. Requisites of notices.

104. The Judge may, at any time and on such terms as to costs and otherwise as to him may seem just, amend any defect or error in any proceeding; and all such amendments may be made as may be necessary for the advancement of justice, determining the real question raised by or depending on the proceedings and best calculated to secure the giving of judgment according to the very right and justice of the case. 10 Edw. VII. c. 32, s. 104. Power to amend proceedings.

Trial.

105. Where a trial is to be had the defendant shall on the day named in the summons, either personally or by agent, appear in the court to answer, and, on answer being made, the Judge shall, without further pleading or formal joinder of issue, proceed in a summary way, to try the action and give judgment; and if satisfactory proof is not given entitling either party to judgment, he may nonsuit the plaintiff. 10 Edw. VII. c. 32, s. 105. Judge may summarily dispose of action or non-suit plaintiff.

106. The clerk shall place all actions in which the sum sought to be recovered exceeds \$100 at the foot of the trial list, and the Judge shall, in such actions unless an agreement not to appeal has been signed and filed, as provided by section 107, take down the evidence in writing, and leave the same with the clerk, but in the event of an application for a new trial it shall be forwarded to the Judge by the clerk for the purposes of the application. 10 Edw. VII. c. 32, s. 106. Order in which actions to be tried. Evidence to be taken down.

107. An appeal shall not lie if, before the commencement of the trial, there is filed with the clerk an agreement in writing not to appeal, signed by the parties, or their agents, and the Judge shall note in his minutes whether such agreement was so filed or not, and the minutes shall be conclusive evidence upon that point. 10 Edw. VII. c. 32, s. 107. Parties may agree not to appeal.

108. If on the day named in the summons the defendant does not appear, or sufficiently excuse his absence, or if he neglects to answer, the Judge, on proof of due service of the summons and particulars, may proceed with the trial in his absence, and, except where the plaintiff's claim is Proceedings in case defendant does not appear.

for unliquidated damages in case of the personal service of the summons and of detailed particulars of the plaintiff's claim, the Judge may, in his discretion, give judgment without further proof. 10 Edw. VII. c. 32, s. 108.

Judge may adjourn hearing of cause.

109. The Judge may adjourn the trial of an action, whether it is being tried with or without a jury, to permit either party to summon witnesses or to produce further proof, or to serve or give any notice necessary to enable him to enter more fully into his case or for any cause which the Judge thinks reasonable, upon such conditions as to payment of costs and admission of evidence, or otherwise, as to him may seem just. 10 Edw. VII. c. 32, s. 109.

Who may act as agents at trial.

110. A barrister or solicitor or any other person not prohibited by the Judge, may appear at the trial or hearing of an action as agent for any party thereto. 10 Edw. VII. c. 32, s. 110.

Tender and Payment of Money into Court.

Plea of tender with payment of money into Court.

111.—(1) If the defendant desires to plead a tender before action of a sum of money in full satisfaction of the plaintiff's claim he may do so on filing his defence with the clerk at least six days before the day appointed for the trial, and at the same time paying into court the amount mentioned in the defence; and notice of the defence and payment shall be forthwith sent by the clerk to the plaintiff by registered post, or delivered at his usual place of abode or business.

Amount tendered to be accepted unless plaintiff gives notice.

(2) The plaintiff shall be deemed to have accepted the money in full satisfaction of his claim and all proceedings in the action shall be stayed unless, within three days after the receipt of notice of the payment, he signifies in writing to the clerk his intention to proceed for his claim notwithstanding such defence, in which case the action shall proceed.

When plaintiff does not give notice.

(3) If the plaintiff does not give the notice mentioned in subsection 2 the money shall be paid to him less \$1 to be paid over to the defendant for his trouble.

Giving of notice after time limited.

(4) The Judge may allow the plaintiff to give the notice to the clerk after the expiration of the said three days on such terms as to him may seem just.

Rule as to costs where plaintiff proceeds for balance.

(5) If after tender and payment into court the plaintiff proceeds with the action and does not recover more than the sum paid into court, he shall pay the defendant his costs, charges and expenses, and the amount thereof may be paid to the defendant out of the money so paid in, or may be recovered from the plaintiff in the same manner as money payable under a judgment; but, if the plaintiff recovers

more than the sum paid into court, the full amount paid into court shall be applied towards the satisfaction of his claim, and judgment may be given against the defendant for the residue and costs of the action. 10 Edw. VII. c. 32, s. 111.

112.—(1) The defendant may, not less than six days before the day appointed for the trial, pay into court a sum in full satisfaction of the plaintiff's claim, together with the plaintiff's costs up to the time of such payment. Defendant may pay money into Court.

(2) The clerk shall forthwith deliver or send notice of such payment by registered post to the plaintiff, and the sum so paid shall be paid to the plaintiff, and he shall be deemed to have accepted it in full satisfaction of his claim, and all proceedings in the action shall be stayed, unless within three days after the receipt of the notice the plaintiff gives notice to the clerk of his intention to proceed for the remainder of his claim, in which case the action shall proceed. Clerk to give notice of payment to plaintiff.

(3) The Judge may allow the plaintiff to give the notice to the clerk after the expiration of the said three days on such terms as to him may seem just. Notice to be given after three days.

(4) If the plaintiff recovers no more than the sum paid into court, he shall pay the defendant all costs, charges and expenses incurred by him in the action after such payment, to be taxed and recovered by the same means as any other sum ordered by the court to be paid. 10 Edw. VII. c. 32, s. 112. Plaintiff to pay defendant's costs if no further sum recovered.

Set-Off and Statutory Defences.

113.—(1) Where the defendant desires to avail himself of the laws of set-off, or of *The Limitations Act* or of a defence under any other statute, he shall, not less than six days before the trial, give notice thereof to the plaintiff, or leave the same for him at his usual place of abode or business if within the division, or if the plaintiff lives without the division, shall deliver the same to the clerk; and in case of a set-off the particulars thereof shall be delivered to the clerk and shall accompany the notice to be given to the plaintiff. Defendant to give notice of set-off or other statutory defence.

(2) Except by leave of the Judge no evidence of set-off shall be given by the defendant save such as is contained in the particulars delivered. Evidence of set-off.

(3) If the set-off proved exceeds the amount found to be due to the plaintiff, judgment shall be entered for the defendant for the excess, if the excess be an amount within the jurisdiction of the court; but if the excess be an amount Provisions if set-off exceeds amount due to plaintiff.

beyond the jurisdiction of the court, the Judge may order that an amount of the set-off equal to the amount found to be due to the plaintiff be satisfied by the claim, but the adjudication shall not be a bar to the recovery by the defendant in a subsequent action for the residue of the set-off. 10 Edw. VII. c. 32, s. 113.

WITNESSES AND EVIDENCE.

Subpœnas.

Parties may obtain subpœnas from clerk.

114. A party may obtain from the clerk of any division court in the county a subpœna with or without the clause for the production of books, papers, and documents, requiring any witness, resident within Ontario or served with the subpœna therein, to attend at a specified court or place before the Judge, or an arbitrator appointed by him under the provisions hereinafter contained, and the clerk, when requested by a party or his agent, shall furnish copies of such subpœna. 10 Edw. VII. c. 32, s. 114.

Service of subpœna, by whom made.

115. Any number of names may be inserted in a subpœna, and service thereof may be made by any literate person, personally or by leaving a copy thereof at the usual place of abode of the witness, and proof of such service and of tender or payment of witness fees and mileage, may be received by the Judge, either orally or by affidavit. 10 Edw. VII. c. 32, s. 115.

Penalty for disobeying subpœna or refusing to be sworn.

116.—(1) Every person served with a copy of a subpœna to or for whom at the time of such service a tender or payment of his witness fees and mileage has been made, who refuses or neglects without sufficient cause to obey the subpœna, and every person in court called upon to give evidence who refuses to be sworn or to give evidence, shall be liable to pay such fine not exceeding \$8 as the Judge may order, and shall be also liable to imprisonment for any time not exceeding ten days on the order of the Judge.

Enforcing payment of fine.

(2) The fine shall be levied and collected with costs, by the same process as a judgment recovered in the court and the whole or any part of the fine, after deducting the costs, shall be applicable, in the discretion of the Judge, towards indemnifying the party injured by such refusal or neglect, and the remainder shall form part of the Consolidated Revenue Fund. 10 Edw. VII. c. 32, s. 116.

Fees to witness out of county.

117. A person served with a subpœna, who is resident in Ontario, but not in the county in which the court is situate, shall be entitled to be paid witness fees and mileage according to the County Court tariff. 10 Edw. VII. c. 32, s. 117.

Commissions to take Evidence.

118.—(1) If a party is desirous of having at the trial or hearing the testimony of a person residing out of Ontario, the Judge, upon hearing the parties, may order the issue of a commission out of and under the seal of the court to a commissioner to take the examination of such person. Power to issue commissions to take evidence.

(2) An order shall not be made for the issue of a commission for taking the testimony of the party applying therefor, or of any person in his employment, unless in the opinion of the Judge a saving of expenses will be caused thereby, or unless it is clearly made to appear that the party or person is aged, infirm, or unable from sickness to appear as a witness. When commission to take evidence of applicant, etc., may be granted.

(3) If it is made to appear to the Judge that a material and necessary witness residing in Ontario is sick, aged, or infirm, or that he is about to leave Ontario, and that his attendance as a witness cannot be procured, the Judge may make an order appointing a suitable person to take his testimony. Examination of witnesses whose attendance at trial cannot be obtained.

(4) An order may also be obtained for the examination of a witness who resides in a remote part of Ontario, and at a great distance from the place of trial, if it be made to appear that his attendance cannot be procured, or that the expense of his attendance would be out of proportion to the amount involved in the action, or so great that the party desiring his attendance should not under the circumstances be required to incur the same. Examination of witnesses residing at a distance from place of trial.

(5) A copy of the order, with two days' notice of the time and place of the examination, shall be served upon the opposite party, or his agent, who may appear, and cross-examine the witness. Service of order.

(6) The provisions of the Rules of the Supreme Court, so far as the same are applicable, shall apply to every commission or order issued under the authority of this section. Rules made applicable to commissions.

(7) The costs of the issue, transmission, execution and return of any commission issued or order made under the provisions of this section shall be in the discretion of the Judge, who may allow a sum in gross therefor; and the costs may be added to any other costs to be paid to the party entitled thereto, and may be recovered in like manner as the ordinary costs of an action. 10 Edw. VII. c. 32, s. 118. Costs of commission.

Books of Account, Affidavits, etc., as Evidence.

119. In an action for a debt or money demand of not more than \$25, and in case of a defence of set-off or of payment so far as the same extends to \$25, the Judge, on being satisfied of their general correctness, may receive the Judge may receive in evidence plaintiff's or defendant's books of account.

plaintiff's, defendant's or garnishee's books as evidence, and may also receive as evidence the affidavit of any party or witness resident out of the county, but may require the party or witness to answer written interrogatories upon oath. 10 Edw. VII. c. 32, s. 119.

Before whom
affidavits may
be sworn.

120.—(1) Affidavits may be sworn before a clerk or deputy clerk, or before a Justice of the Peace, Notary Public or commissioner for taking affidavits.

Affidavits
sworn before
agents not to
be used.

(2) An affidavit, sworn before the agent of the party on whose behalf it was made, or before the clerk or partner of such agent, shall not be used. 10 Edw. VII. c. 32, s. 120.

JUDGE'S DECISION.

Judge may
give judgment
instantly, or
postpone
judgment.

121. The Judge shall, in court, openly, and as soon as may be after the trial, pronounce his decision; but if he is not then prepared to pronounce a decision he may postpone it until it is convenient for him to give the same, and he shall then send it to the clerk, who shall forthwith enter the judgment and by registered post notify the parties or their agents thereof. 10 Edw. VII. c. 32, s. 121.

Judge may
direct times
and propor-
tions in which
judgment
shall be paid.
Execution not
to issue for
fifteen days
after judg-
ment.

122.—(1) The Judge may order the times and the proportions in which any sum and costs recovered by judgment shall be paid, having regard to the provisions of section 124.

(2) Unless otherwise ordered, execution shall not issue within fifteen days after the entry of judgment, but the Judge may order the amount of the judgment or any instalment thereof to be paid into court. 10 Edw. VII. c. 32, s. 122.

New trial.

123.—(1) Upon application made within fourteen days after the trial, or where the decision is not given at the trial after the mailing of the notice of the decision to the party applying, and upon good grounds being shown, the Judge may grant a new trial upon such terms as he thinks reasonable, and in the meantime may stay proceedings.

Extending
time for
application.

(2) If reasonable excuse for the delay is shown to the satisfaction of the Judge, the application may be made at any time within fourteen days after the expiration of the first mentioned fourteen days.

Judgment on
application
for new trial.

(3) Instead of granting a new trial, the Judge may pronounce the judgment which in his opinion ought to have been pronounced at the trial, and may order judgment to be entered accordingly. 10 Edw. VII. c. 32, s. 123.

Execution not
to be post-
poned for
more than 50
days

124. Except where a new trial is granted, the issue of execution shall not be postponed for more than fifty days from the service of the summons, without the consent of the

party entitled to the same; but if it is proved to the satisfaction of the Judge that a party is unable, from sickness or other cause, to pay the debt or damages recovered against him, or any instalment thereof ordered to be paid, or that for any other reason the issue of execution should be further postponed, the Judge may stay the judgment, order or execution for such time and on such terms as he thinks fit, and so from time to time until it is proved that the cause of disability has ceased. 10 Edw. VII. c. 32, s. 124.

APPEALS.

125. Subject to the provisions of section 107 an appeal shall lie to a Divisional Court from the decision of the Judge at or after the trial or upon an application for a new trial, except in cases where a new trial has been granted—

Appeals to
Divisional
Court.

- (a) In an action or garnishee proceeding where the sum in dispute exceeds \$100, exclusive of costs;
- (b) In interpleader where the money or the value of the goods or chattels claimed or proceeds thereof exceeds \$100, or where the damages claimed by or awarded to either party against the other or against a bailiff exceeds the sum of \$60;
- (c) Where the parties consent to an appeal; or
- (d) Where the effect of the decision is to determine that any general assessment made by a mutual insurance company is invalid; but the company, unless the Divisional Court otherwise directs, shall pay the respondent's costs of the appeal between solicitor and client on the County Court scale in any event. 10 Edw. VII. c. 32, s. 125.

126.—(1) Where an appeal lies, each party shall, before or at the trial, leave with the clerk a memorandum in writing of the name and place of abode of some person resident within the county town upon whom the notice of appeal, and all other papers thereafter requiring service, may be served for him, and service upon such person, or, in his absence, at his place of abode, shall be sufficient; and, in the event of failure to leave such memorandum, all papers requiring service upon the party so failing may be served upon the clerk, or left at his office, and the clerk shall forthwith send, by registered post, all papers so served upon him, to the person entitled thereto.

Agents for
service where
right to
appeal.

(2) This section shall not apply to a Provisional Judicial District. 10 Edw. VII. c. 32, s. 126.

Case of
Judicial
District.

127. The clerk shall, at the request of the appellant or his agent, certify under his hand to the Clerk of the Central

Certified pro-
ceedings, etc.,
to be furnished
by clerk.

office at Osgoode Hall, Toronto, the summons with all notices indorsed thereon, the claim, and any notice of defence, the evidence and all objections and exceptions thereto, and all motions or orders made, granted, or refused therein, together with such notes of the Judge's charge as may have been made, the decision when in writing, or the notes thereof, and all affidavits and other papers in the action, the whole hereinafter called the appeal case; and the clerk shall furnish to the parties, when required so to do, copies of the proceedings so certified, or such part thereof as may be required, and for every copy he shall be entitled to receive five cents for every one hundred words. 10 Edw. VII. c. 32, s. 127.

Procedure upon appeal from division court.

128.—(1) The appellant shall, within two weeks after the date of the decision complained of or within such other time as the Judge may order, file the appeal case with the proper officer of the Supreme Court, and shall set down the appeal to be heard at the latest two clear days before the first sittings of a Divisional Court which commences after the expiration of thirty days from the decision complained of, and shall give notice thereof and of the appeal, stating the grounds thereof, to the respondent, his solicitor or agent, at least seven days before the commencement of such sittings; and the Divisional Court shall have power to dismiss the appeal or to give any judgment and make any order which ought to have been made, or to grant a new trial, and shall give such order or direction to the court below touching the decision or judgment to be given in the matter as the law requires, and may award costs in its discretion, which shall be certified to and form part of the judgment of the court below, and upon receipt of such order, direction and certificate, the court below shall proceed in accordance therewith.

Powers of Divisional Court on appeal.

(2) The Divisional Court shall be deemed to be seized of the appeal if and when the appeal case is filed; and, subject to Rules of the Court, may extend the time for setting down the appeal and for giving notice thereof and of the appeal, and for doing any act or taking any proceeding in or in relation to the appeal; and may, if the appeal case is incomplete or inaccurate, direct the same to be amended or to be sent back to the clerk for amendment; and may also allow the notice of appeal to be amended.

Stay of proceedings.

(3) After the appeal has been set down to be heard, the execution of the judgment appealed from shall be stayed pending the appeal, unless otherwise ordered by a Judge of the Supreme Court. 10 Edw. VII. c. 32, s. 128.

Taxable costs on appeal.

129. The costs taxable, between party and party of and incidental to an appeal shall be the actual disbursements, and no greater amount over and above actual disbursements than \$15, inclusive of counsel fee; the costs of an appeal

between solicitor and client, shall be taxable on the County Court scale. 10 Edw. VII. c. 32, s. 129.

JURIES.

130. Either party may require a jury in an action of tort or replevin where the sum or the value of the goods sought to be recovered exceeds \$20, and in other actions where the amount sought to be recovered exceeds \$30, and in interpleader. 10 Edw. VII. c. 32, s. 130.

131.—(1) Where the plaintiff requires a jury, he shall give notice thereof to the clerk one week before the sittings of the court at which the action is to be tried, and deposit with him the proper fees for the expenses attending the summoning of the jury; and where a claimant or a defendant requires a jury, he shall, within five days after the day of service of the summons on him, give to the clerk the like notice, and deposit with him the proper fees; and thereupon, in either case, a jury shall be summoned.

(2) In an action transferred from one court to another, either party may require a jury to be summoned by giving to the clerk of the court to which the action has been transferred, three clear days before the sittings of the court at which the case is to be tried, a notice requiring a jury to be summoned, and depositing with him the proper fees for the expenses attending the summoning of the jury. 10 Edw. VII. c. 32, s. 131.

132. Unless exempted by *The Jurors' Act*, every person whose name appears on the last revised voters' list of a municipality partly or wholly within the division who resides therein, and whose name is marked 'J,' shall be liable to serve as a juror for the court of such division. 10 Edw. VII. c. 32, s. 132.

133.—(1) The jurors shall be residents of the division and shall be selected from the last revised voters' lists of the municipalities partly or wholly within the division.

(2) Where there has been no previous selection of jurors the manner of selecting them shall be as follows:—

(a) The clerk shall begin with the name of the first qualified person on the list of the municipality and proceed with the selection by taking the names in rotation until the requisite number has been selected.

(b) Where there are several municipalities the clerk shall begin with the name of the first qualified person on the list of the municipality in which the court is held, taking one name from the list, and then shall take one name from each of the

lists of the other municipalities in rotation, beginning with that list which contains the greatest number of names of qualified persons, and shall repeat the same process until the requisite number has been selected.

Where there has been previous selection of jurors,

(3) Where there has been a previous selection of jurors the clerk shall proceed as provided by the last preceding subsection, except that he shall begin where he left off at the next preceding selection, or in the case of a new list as nearly as may be at the place which corresponds with the place where he left off at the previous selection.

Where cost of summoning jury is excessive.

(4) If it appears to the Judge that the cost of summoning a jury is excessive, by reason of the residences of the persons liable to be selected being in a distant portion of the division, he may direct the clerk to begin with the name of the first qualified person on the list of any municipality partly or wholly within the division, and proceed as in subsection 2.

When municipality is a party.

(5) Where a municipality, partly or wholly within the division, is a party, and the jury would, if selected in ordinary course, be composed of ratepayers of such municipality, the Judge, upon the application of any party, may direct the clerk not to select any juror from the list of such municipality, or may before or at the trial direct that the issues shall be tried and damages be assessed without a jury. 10 Edw. VII. c. 32, s. 133.

Clerk of municipality to furnish copy of voters' list.

134. The clerk of every municipality shall furnish each Division Court clerk, within whose division the municipality is partly or wholly situate, with a copy of the voters' list of the municipality immediately after the revision of the same in each year. 10 Edw. VII. c. 32, s. 134.

Case of Judicial District.

135. Sections 132 to 134 shall not apply to a Provisional Judicial District. 10 Edw. VII. c. 32, s. 135.

Summoning Jurors.

136. Where a jury is required to be summoned, the clerk shall cause not less than twelve of the persons liable to serve as jurors to be summoned, and the summons shall be served at least two days before the court, either personally, or by leaving the same with a grown up person at the residence of the juror, and the summons shall be returned to the clerk with an affidavit of service of the bailiff serving the same. 10 Edw. VII. c. 32, s. 136.

Parties entitled to challenge.

137. Each party shall be entitled to challenge two jurors peremptorily and any juror for cause. 10 Edw. VII. c. 32, s. 137.

Penalty on jurors disobeying summons.

138. A juror who, after being duly summoned, wilfully neglects or refuses to attend, shall be liable to a fine, in the

discretion of the Judge, not exceeding \$4, which shall be levied and collected, with costs, by the same process as a judgment recovered in the court. 10 Edw. VII. c. 32, s. 138.

139.—(1) If a clerk of a municipality, for six days after demand in writing, neglects or refuses to furnish the clerk of a Division Court, within the limits of which the municipality for which he is clerk is partly or wholly situate, with a copy of the voters' list as provided in section 134, the clerk of the Division Court may issue a summons, to be personally served on the clerk of the municipality, three days at least before the sittings of the court, requiring him to appear at the then next sittings of the court, to show cause why he refused or neglected to comply with the provisions of such section.

Proceedings against Clerk of municipality for refusing to furnish copy of voters' list.

(2) Upon proof of the service of the summons, the Judge may, in a summary manner, inquire into the neglect or refusal, or may give further time, and may impose such fine upon the clerk of the municipality, not exceeding \$20, as he may deem just, and may order him to pay the costs of the proceedings; and the order of the Judge may be enforced by the same process as a judgment recovered in the court. 10 Edw. VII. c. 32, s. 139.

Judge may fine municipal clerk for breach of duty.

140.—(1) Actions to be heard by the Judge alone shall be set down in a list separate from the list of those to be tried by a jury, to be severally called "The Judge's List," and "The Jury List," and actions shall be set down in the order in which they were entered with the clerk.

Judge's list and Jury list.

(2) "The Jury List" shall be first disposed of, unless the Judge otherwise directs. 10 Edw. VII. c. 32, s. 140.

Jury List to be first.

141. Five jurors shall be empanelled and sworn to do justice between the parties whose cause they are required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence, and the verdict of every jury shall be unanimous. 10 Edw. VII. c. 32, s. 141.

Five jurors to be empanelled, etc.

Verdict to be unanimous.

142.—(1) If the panel is exhausted, the Judge may direct the clerk to summon, from the body of the court, a sufficient number of disinterested persons to make up a full jury, and any person so summoned may, saving all lawful exceptions and rights of challenge, act as a juror.

Judge may call jurors.

(2) Where the Judge thinks it proper to have the action or any controverted fact tried by a jury, the clerk shall instantly return a jury of five disinterested persons present to try the same, and the Judge may give judgment on the verdict of the jury.

Judge may order jury to be empanelled to try any disputed fact.

Fee of juror.

(3) Each juror so called and sworn shall be paid the sum of ten cents, and the moneys so paid shall be taxed as costs in the cause. 10 Edw. VII. c. 32, s. 142.

Judge may discharge jury not agreeing, etc.

143. If the Judge is satisfied that a jury, after having been out a reasonable time, cannot agree upon their verdict, he may discharge them and adjourn the trial, and order the clerk to summon a new jury for the next sittings, unless the parties consent that the Judge may give judgment on the evidence already taken, in which case he may give judgment accordingly. 10 Edw. VII. c. 32, s. 143.

Power to direct nonsuit or dismiss action.

144.—(1) In all cases of trial by jury the Judge shall have power to determine, after hearing the whole evidence or the evidence adduced on behalf of the plaintiff alone, whether there is any evidence in support of the plaintiff's case which ought to be submitted to the jury, and if in his opinion there is no such evidence, he may then, or after verdict, if he has reserved his decision, direct a nonsuit or dismiss the action.

Submitting questions to jury.

(2) The Judge may direct the jury to answer any questions of fact stated to them by him and the jury shall answer them, and, subject to the provisions of subsection 1, upon their answers the Judges shall enter such judgment as in his opinion may be proper.

Duty of Judge.

(3) The Judge shall determine the law and direct the jury thereon. 10 Edw. VII. c. 32, s. 144.

Fees for jury fund.

145.—(1) There shall be paid to the clerk, on every action originally entered in his court, in addition to all costs or jury fees payable

(a) Where the claim exceeds \$20 but does not exceed \$50, three cents;

(b) Where the claim exceeds \$60, but does not exceed \$100, six cents;

(c) Where the claim exceeds \$100, twenty-five cents;

and the same shall be taxed and allowed as costs in the cause.

Return.

(2) On or before the 15th day of January in every year the clerk shall return to the treasurer of the county a statement, under oath, showing the number of actions originally entered in his court during the year previous, in which the claim exceeded \$20 but did not exceed \$60, the number in which the claim exceeded \$60 but did not exceed \$100, and the number in which the claim exceeded \$100.

Fees to be paid to County Treasurer.

(3) He shall, with the statement, pay over to the treasurer the fees payable under this section; and the treasurer shall keep an account of all money so received by him under the head of "Division Court Jury Fund."

(4) The clerk of every court, the limits of which are wholly within a city, shall make the return and payment provided for by subsections 2 and 3, to the treasurer of the city who shall keep an account in the same manner as is provided in the case of a treasurer of a county. Return in cities forming separate divisions.

(5) In the case of cities, other than those provided for by subsection 4 and towns separated from the county, the amounts paid in by the clerks and the amount paid by the county treasurer to the clerks for jury fees shall be taken into account in settling the proportion of the charges to be paid by the city or town towards the cost of administration of justice. Other cities and towns forming separate divisions.

(6) The clerk shall pay to every person who has been summoned as a juror and who attends during the sittings of the court for which he has been summoned, and who does not attend as a witness or as a litigant, the sum of \$1 and the sum of ten cents per mile for every mile in excess of two miles necessarily travelled by him from his place of residence to the place at which the court is held; and, having so paid the same, the Judge shall so certify to the treasurer, and shall deliver the certificate to the clerk, and the treasurer shall, upon the presentation of the certificate, pay to the clerk the amount which the clerk appears by the certificate to have paid the jurors. Fees of jurors

(7) This section shall not apply to a Provisional Judicial District. 10 Edw. VII. c. 32, s. 145; 1 Geo. V. c. 17, s. 23. Case of Judicial District.

PROCEEDINGS TO GARNISH DEBTS.

146. Subject to the provisions of section 7 of *The Wages Act*, where a debt or money demand of the proper competence of the Division Court, and not being a claim for damages, is due and owing to one party from another, or a judgment of a Division Court remains unsatisfied, in whole or in part, and a debt is owing or accruing to the debtor from any other person, the person to whom such first mentioned debt, money demand, or judgment is due and owing (hereinafter called the primary creditor), may attach and recover the debt owing or accruing to his debtor (hereinafter called the primary debtor) from any other person (hereinafter called the garnishee), or sufficient thereof to satisfy the claim of the primary creditor, subject always to the rights of other persons in respect of such debt. 10 Edw. VII. c. 32, s. 146. Garnishment of debts. Rev. Stat. c. 143.

As to attachment of wages see The Wages Act.

147.—(1) In all cases under the provisions of sections 151 and 155, where the debt sought to be garnished is for wages or salary, there shall be filed with the clerk an affidavit showing the residence of the primary debtor and the nature of his wages. Memorandum on garnishee summons where debt attached is for wages.

occupation in the service of the garnishee at the time of the issuing of the summons (if then in such service), and stating whether the debt alleged or adjudged to be due by the primary debtor to the primary creditor was or was not incurred for board or lodging, and there shall also be endorsed upon or annexed to the summons served on the garnishee a memorandum to the like effect, and in the absence of such affidavit or memorandum the debt may be deemed by the garnishee not to have been incurred for board or lodging.

Material where debts due by unmarried persons.

(2) If the primary debtor is alleged to be an unmarried person, having no family depending on him for support, a statement to that effect, verified by affidavit, shall be filed with the clerk and the statement shall also be endorsed upon or annexed to the summons served on the garnishee; and in the absence of such affidavit or statement, such person may be deemed by the garnishee to have a family depending on him for support. 10 Edw. VII. c. 32, s. 147.

Where the Primary Creditor's Claim is a Judgment.

Attaching order to be granted on judgment.

148. After judgment has been recovered, application may be made to the Judge, on behalf of the primary creditor, on affidavit stating when the judgment was recovered, and how much thereof remains unsatisfied, and that the deponent has reason to believe, and does believe, that some one or more persons (naming them, or stating that he is unable to name them) is or are within Ontario and is or are indebted to the primary debtor, for an order that all debts owing or accruing to the primary debtor be attached to satisfy the judgment; and the order may be made in the prescribed form. 10 Edw. VII. c. 32, s. 148.

Service thereof to bind all debts, etc.

149. The service of the order on a garnishee shall have the effect, subject to the rights of other persons, of attaching and binding in his hands all debts then owing or accruing from him to the primary debtor, or sufficient thereof to satisfy the claim of the primary creditor, and payment by the garnishee into court of the debt so attached to the extent to which the judgment is unsatisfied, shall be to that extent a discharge of such debt. 10 Edw. VII. c. 32, s. 149.

Garnishee may pay in his own discharge.

Payment to any but primary creditor void.

150. Payment by the garnishee after service on him of the order, otherwise than into Court, except by leave of the Judge, shall, to the extent of the primary creditor's claim and costs, be void; and the garnishee shall be liable to pay the same again, to the extent of the primary creditor's claim, unless the Judge otherwise orders. 10 Edw. VII. c. 32, s. 150.

Primary creditor may summon garnishee.

151. Whether an attaching order is or is not made, the primary creditor may cause to be issued out of the court of the division in which the garnishee, or one of them, if there be joint garnishees, resides or carries on business, a summons

in the prescribed form, upon or annexed to which shall be a memorandum showing the names of the parties as designated in the judgment, the date when, and the court in which, it was recovered, and the amount unsatisfied, and the summons shall be returnable either at any ordinary sittings of the court, or at such other time and place, to be named therein, as the Judge may appoint. 10 Edw. VII. c. 32, s. 151.

152. A copy of the summons and memorandum shall be served on the garnishee, within the time and in the manner provided for the service of a summons in other actions, and also on the primary debtor, unless the Judge otherwise orders. 10 Edw. VII. c. 32, s. 152. Mode of service.

153. In proceedings under section 151 where the garnishee is a body corporate, not having its chief place of business within Ontario, the summons shall be issued from the court in which the judgment was recovered, or, in case the judgment has been transferred, from the court to which it was transferred, and shall be served upon the agent of the body corporate whose office as such agent is nearest to the place where the court is held. 10 Edw. VII. c. 32, s. 153. Service on corporation, whose head office is not in the Province.

154. At the hearing of the summons, on proof of the amount owing or accruing from the garnishee to the primary debtor, and if no sufficient cause appears why it should not be paid and applied in satisfaction of the judgment, the Judge may give judgment against the garnishee in the prescribed form for the amount owing or accruing from him, or sufficient thereof to satisfy the judgment; and execution against the garnishee may issue thereon, if due, or when and as it becomes due, or at such later period as the Judge may order. 10 Edw. VII. c. 32, s. 154. Judgment at hearing.

Where the Primary Creditor's Claim not a Judgment.

155.—(1) Where a judgment has not been recovered for the claim of the primary creditor, he may cause to be issued out of the court of the division in which the garnishees, or one of them if they are joint garnishees, reside or carry on business, a summons, Form 4, with the particulars of the claim of the primary creditor against the primary debtor with reasonable certainty and detail attached thereto or endorsed thereon, and the summons shall be returnable as provided by section 151. Garnishee summons before judgment.

(2) As between the primary creditor and the primary debtor the summons shall be deemed a special summons, and all provisions of this Act applicable to a special summons and proceedings thereon shall apply. Summons to be deemed special summons.

(3) Where several garnishees reside or carry on business in the same division they may, by leave of the Judge, be included in the same summons. Several garnishees included in summons.

Service of
summons.

(4) A copy of the summons and particulars shall be served on the primary debtor and on the garnishee in the manner provided for the service of a summons in other actions. 10 Edw. VII. c. 32, s. 155.

Judgment
against
garnishee.

156. Where judgment is obtained against the primary debtor under the provisions of sections 98, 99, or 100, or is obtained at the trial, or where judgment is not then given, on proof of the service on the primary debtor of a copy of the summons and particulars, and of the debt due and owing by the primary debtor, the Judge, on proof of the amount owing or accruing due to the primary debtor from the garnishee, may give judgment against the garnishee in the prescribed form for the amount so owing or accruing from him or sufficient thereof to satisfy the claim of the primary creditor and costs, which sum the garnishee shall pay into court towards the satisfaction of the claim and costs; and, in default, execution may issue therefor, if due, or as it becomes due, or at such later period as the Judge may order. 10 Edw. VII. c. 32, s. 156.

General Provisions.

All parties
interested may
show cause.

157.—(1) Whether the claim of the primary creditor is or is not a judgment, the garnishee and all other persons in any way interested in or to be affected by the proceeding may show any just cause why the debt sought to be garnished should not be paid to or applied in or towards satisfaction of the claim of the primary creditor.

Setting up
defences in
garnishee
proceedings.

(2) A garnishee who desires to set up a statutory or other defence or set-off or to dispute or admit liability in whole or in part, shall file with the clerk notice thereof with the particulars of such defence or set-off, or an admission of the amount owing or accruing by him, within eight days after service on him of the summons, and the clerk shall forthwith send by registered post to each of the other parties a copy of such defence, set-off or admission, and the primary creditor may file with the clerk a notice that he admits or disputes the defence or set-off or accepts or disputes the admission of liability.

Judgment in
default of
defence.

(3) The clerk shall forthwith send to the garnishee by registered post a copy of the notice, and in the absence of a defence or set-off the Judge may, in his discretion, give judgment against the garnishee; and unless the primary creditor files a notice disputing such defence, set-off or admission of liability, the garnishee shall not be bound to attend at the trial, and the sum admitted to be owing or accruing by him shall be taken to be the correct amount of his liability, unless the Judge shall otherwise order, in which latter case the garnishee shall be notified by the clerk by registered post, and shall have an opportunity of attending at a subsequent date and being heard before judgment is given against him.

(4) The costs of all notices required to be given under this ^{Costs.} section, shall be costs in the cause, and in no case shall be payable by the garnishee, unless so ordered by the Judge. 10 Edw. VII. c. 32, s. 157.

158. Service of a summons on the garnishee shall have the ^{Effect of service} same effect and consequence as service of an attaching order. ^{on garnishee.} 10 Edw. VII. c. 32, s. 158.

159. In giving judgment for the primary creditor, the Judge may award to him the costs of the proceedings out of ^{Costs of} the amount found due from the garnishee to the primary ^{garnishee pro-} debtor. ^{ceedings.} 10 Edw. VII. c. 32, s. 159.

160.—(1) Upon the application of a person entitled to or ^{Application to} interested in any debt attached or bound in the hands of a ^{discharge} garnishee made at any time before actual payment out of ^{debt from} court to the primary creditor, the Judge may order that such ^{attachment.} debt be discharged from the claim of the primary creditor.

(2) A like order may be made, after the debt has been paid ^{Order after} out of court to the primary creditor, in which case all parties ^{money paid out} shall be remitted to their original rights in respect thereto, ^{of court.} except as against the garnishee, whose payment shall not be affected thereby, but shall be and remain an effectual discharge to him. 10 Edw. VII. c. 32, s. 160.

161.—(1) The Judge may, before giving judgment against ^{Security from} the garnishee, or at any time before actual payment out of ^{primary} court to the primary creditor, order such security as may be ^{creditor.} approved by him or by the clerk, to be given by or on behalf of the primary creditor, to abide by any order which may be made for repayment.

(2) The bond shall be to the clerk by his name of office, and ^{Effect of bond.} shall enure for the benefit of all persons interested in or entitled to the debt, and, by leave of the Judge and on such terms as he may impose, may be sued on in the name of the clerk for the time being, for the benefit of such persons. 10 Edw. VII. c. 32, s. 161.

162.—(1) Where a person other than the primary creditor or primary debtor claims to be entitled to the debt owing ^{Case of ad-} or accruing from the garnishee or any part thereof by assign- ^{verse claims.} ment or otherwise, the Judge, after notice to all persons interested, may enquire into and decide upon the claim as the justice of the case may require.

(2) Where the amount claimed by any such person exceeds ^{Right to jury} \$30, the provisions of section 130 and the following sections ^{in certain} relating to juries shall apply so as to give any party to the ^{cases.} proceeding a right to require a jury. 10 Edw. VII. c. 32, s. 162.

Judge may
postpone or
adjourn pro-
ceedings.

163. The Judge may adjourn, from time to time, the hearing and other proceedings in garnishee cases, to allow time for giving omitted notices, or to produce further evidence, or for any other purpose, may require service on and notice to other additional persons, and may prescribe a form for any proceeding. 10 Edw. VII. c. 32, s. 163.

ARBITRATION.

Reference to
arbitration by
order of Judge
or by consent.

164.—(1) The Judge, with the consent of the parties or their agents, may order the action, with or without other matters in dispute between the parties, being within the jurisdiction of the court, to be referred to the arbitration of such person or persons, and in such manner and on such terms as he may deem just.

Reference by
agreement.

(2) The parties to an action may by writing, signed by themselves or their agents, agree to refer the matters in dispute to the arbitration of a person or persons named in the agreement.

Agreement to
be filed.

(3) The agreement shall be filed with the clerk, and entered in the Procedure Book, as notices are entered. 10 Edw. VII. c. 32, s. 165.

Revocation of
reference.

165. The reference shall not be revocable by either party except by leave of the Judge. 10 Edw. VII. c. 32, s. 166.

Award to be
entered as the
judgment.

166. The award shall be entered by the Clerk as the judgment in the action, and he shall forthwith give notice thereof to the parties. 10 Edw. VII. c. 32, s. 167.

Judge may set
aside award.

167.—(1) The Judge, on application to him within fourteen days after the entry of the award, may set it aside and remit the matters referred to the same arbitrator or arbitrators, or may order another reference to be made in the manner aforesaid.

Application
after time
limited.

(2) If reasonable excuse for the delay is shown to the satisfaction of the Judge, the application may be made at any time within fourteen days after the expiration of the first mentioned fourteen days. 10 Edw. VII. c. 32, s. 168.

Arbitrators
may administer
oaths.

168. An arbitrator may administer an oath to the parties and to the witnesses examined before him. 10 Edw. VII. c. 32, s. 169.

CONFESSIONS OF DEBT.

Clerks and
bailiffs may
take confes-
sions.

169.—(1) A clerk or bailiff may take a confession or acknowledgment of debt from a defendant, in the prescribed form, which shall be witnessed by the clerk or bailiff at the time of the taking thereof; and upon the production of the

confession or acknowledgment to the Judge, and proof thereof by the oath of the clerk or bailiff, the Judge may order that judgment be entered thereon.

(2) The oath shall state that the party making it has not received, and that he will not receive, anything from the plaintiff or defendant, or any other person, except his lawful fees, for taking the confession or acknowledgment, and that he has no interest in the demand sought to be recovered. 10 Edw. VII. c. 32, s. 170.

COSTS.

170.—(1) Unless otherwise provided, the costs of and incidental to all actions shall be in the discretion of the Judge, who shall have full power to determine by whom and to what extent costs shall be paid. Judge's authority as to costs.

(2) If the Judge does not make an order as to costs they shall abide the event of the action. Costs to abide event except by order.

(3) Where the plaintiff does not appear or does not prove his claim, the Judge may award to the defendant a sum for his trouble and attendance not exceeding what he would be entitled to if a witness on his own behalf, to be recovered by execution. Allowance to defendant for attendance.

(4) Where the plaintiff fails to recover judgment by reason of the court not having jurisdiction, the Judge shall nevertheless have the power conferred by subsection 1, and the recovery of the costs awarded may be enforced by the same remedies by which costs of proceedings within the proper competence of the court are recoverable. 10 Edw. VII. c. 32, s. 171. Costs when action fails for want of jurisdiction.

171. Where in a contested action for more than \$100, and in the cases mentioned in clauses (b) and (c) of section 125, where a counsel, solicitor or agent has been employed by the successful party in the conduct of the cause or defence, the Judge may direct a sum of \$5, to be increased according to the difficulty and importance of the case to not more than \$10, to be allowed to the successful party, and the same shall be added to the costs. 10 Edw. VII. c. 32, s. 172. Counsel fees.

172. Where the defendant having disputed the plaintiff's claim, afterwards and before the opening of the court, confesses judgment or pays the claim so short a time before the sittings of the court that the plaintiff cannot in the ordinary way be notified thereof, and without such notice the plaintiff *bona fide* and reasonably incurs expenses in procuring witnesses or in attending at court, the Judge may order the defendant to pay such costs or such portion thereof as to him may seem just. 10 Edw. VII. c. 32, s. 173. Costs of witnesses in certain cases.

JUDGMENT AND EXECUTION.

When money not paid, pursuant to order, execution to issue.

173.—(1) Where the Judge gives judgment or makes an order for the payment of money, and default is made in payment of the whole or of any part thereof, the party in whose favour the order has been made shall be entitled to execution against the goods and chattels of the party in default.

Form of execution.

(2) The clerk, at the request of the party prosecuting the judgment or order, shall issue an execution, Form 5, to a bailiff of the court, or to a bailiff of any other court within the county, who by virtue thereof shall levy by distress and sale of the goods and chattels of the party in default such sum and costs, with interest thereon from the date of the order or of the entry of the judgment, as have been ordered to be paid and remain due, and shall pay the same over to the clerk. 10 Edw. VII. c. 32, s. 174.

Cross judgments may be set off.

174. If there are cross judgments between the parties, the party who has obtained judgment for the larger sum shall have execution for the excess and satisfaction for the remainder, and also satisfaction on the judgment for the smaller sum shall be entered; and if both sums are equal, satisfaction shall be entered upon both judgments. 10 Edw. VII. c. 32, s. 175.

Writs of execution where to be executed.

175. Except in actions brought under section 73, an execution or attachment shall not be executed out of the limits of the county over which the Judge of the court from which the same issues has jurisdiction. 10 Edw. VII. c. 32, s. 176.

Effect of payment of execution before sale.

176. Where the party against whom an execution has been issued pays or tenders to the clerk or to the bailiff, before an actual sale of his goods and chattels, the amount to be levied, or so much thereof as the party in whose favour the execution has issued agrees to accept in full of his debt, together with the fees to be levied, the execution shall thereupon be superseded, and the bailiff shall withdraw from possession. 10 Edw. VII. c. 32, s. 177.

Clerk to give notice to plaintiff of return of *nulla bona* in case of execution on a transcript of judgment.

177.—(1) The clerk, immediately after a return of *nulla bona* has been made to an execution issued on a transcript of judgment, shall forward by registered post to the plaintiff and to the clerk who issued the transcript a notice informing them of the date at which the execution issued, the date at which it was returned by the bailiff, and the return made.

Registration certificate to be filed.

(2) The clerk shall file among the papers in the action the post-office certificate of registration, and the absence from amongst the papers of the certificate shall be *prima facie* evidence against the clerk that the notice was not forwarded. 10 Edw. VII. c. 32, s. 178.

178. Where a memorandum of the amount of a judgment or execution or a certificate of a claim within the jurisdiction of a Division Court is filed with a sheriff under *The Creditors' Relief Act*, and the amount is not paid in full, and the sheriff is unable to make the money thereon, the creditor may obtain from the sheriff a return according to the fact, and file the same with the clerk of the court in which the judgment was recovered, or, in the case of a certificate of a claim, with the clerk of the court of the division where the cause of action arose, or the debtor, or one of the debtors, if more than one, resides, and the clerk shall enter the return in his Procedure Book, and in the latter case the claim shall thereupon become a judgment of the court for the unpaid balance due thereon appearing by the return, and may be enforced in the same manner as a judgment of the Division Court. 10 Edw. VII. c. 32, s. 179.

Enforcing claims under Creditors' Relief Act in Division Courts. Rev. Stat. c. 81.

179. In the case of the death of either or both of the parties to a judgment, the party in whose favour the judgment has been entered, or his personal representative in case of his death, may in the prescribed form revive the judgment against the other party, or his personal representative in case of his death, and may issue execution thereon. 10 Edw. VII. c. 32, s. 180.

Revivor of judgment in case of death of party.

180.—(1) Every execution against goods shall bear the date of its issue, and shall be returnable immediately after the execution thereof, and, if unexecuted shall remain in force for thirty days, unless renewed, but may be renewed from time to time in the prescribed manner by the clerk, at the instance of the execution creditor, for six months from the date of the renewal.

Execution, when dated and returnable.

Renewable.

(2) The execution so renewed shall have effect and be entitled to priority according to the time of the original delivery thereof to the bailiff. 10 Edw. VII. c. 32, s. 181.

Priority of execution.

181. Where the Judge is satisfied by the oath of the execution creditor or by other testimony that he will be in danger of losing the amount of the judgment if compelled to wait till the day appointed for the payment thereof before an execution can issue, the Judge may order an execution to issue at such time as he may deem just. 10 Edw. VII. c. 32, s. 182.

Judge may order an execution to issue before regular day.

182.—(1) Where an execution against goods is returned *nulla bona*, and the sum remaining unsatisfied on the judgment amounts to the sum of \$40 or upwards, the judgment creditor shall be entitled to an execution, Form 6, against the land of the judgment debtor, and the clerk, at the request of the party prosecuting the judgment, shall issue an execution against the land of the judgment debtor directed to the sheriff of any county.

Executions against lands

Effect of
execution.

(2) The execution shall have the same force and effect as an execution issued from a County Court.

Sheriff's re-
turn to be
made to Clerk.

(3) The sheriff shall make a return thereof, and pay any money made thereon to the clerk of the court out of which the execution issued.

Further pro-
ceedings by
execution
creditor

(4) Until the judgment is fully satisfied, the execution creditor may, subject to section 183, pursue the same remedy for the recovery thereof as if the judgment had been obtained in the County Court.

Duration and
renewal of
writ.

(5) The writ, if unexecuted, shall remain in force for three years only from its issue unless renewed, but may be renewed from time to time in the prescribed manner by the clerk at the instance of the execution creditor for three years from the date of the renewal.

Formal effect
of renewal.

(6) The execution may be renewed by being marked on the margin with a memorandum signed by the clerk stating the day, month and year of the renewal, and a writ so renewed shall have effect and be entitled to priority according to the time of the original delivery thereof to the sheriff.

Evidence of
renewal.

(7) The production of an execution purporting to be marked with the memorandum shall be *prima facie* evidence of its having been renewed.

Fees on writ
against lands.

(8) The sheriff shall be entitled to the same fees as upon a writ of execution against land issued from a County Court. 10 Edw. VII. c. 32, s. 183.

Certificate
in lieu of
return of
execution.

(9) Where land is on hand for want of buyers a sheriff to whom such execution is directed may endorse thereon a return of "land on hand for want of buyers" and shall return a certificate of such endorsement to the Clerk of the Division Court from whose office such execution issued in lieu of the writ; and such endorsement and the certificate so returned shall be deemed a return of the writ, and thereupon a writ of *venditioni exponas* may be issued by the Clerk for the sale of such land and the original execution shall remain in force for the residue. 2 Geo. V. c. 17, s. 14 (2).

Further pro-
ceedings after
execution
against lands
issued.

183. After an execution against lands has been issued under the next preceding section, no further proceedings shall be had in the court out of which the execution issued without an order of the Judge, unless the judgment creditor or his agent makes and files with the clerk an affidavit stating:—

- (a) That the judgment remains unsatisfied in whole or in part;
- (b) The amount, if any, which has been paid upon the judgment;
- (c) That execution against land has been returned unsatisfied, or that he believes the judgment debtor

has not sufficient land in the county, to the sheriff of which the execution was directed, to satisfy the judgment. 10 Edw. VII. c. 32, s. 184.

184. The bailiff, after making a seizure under an execution against goods, shall endorse thereon the date of the seizure, and shall immediately, and at least eight days before the time appointed for the sale, put up at three of the most public places in the division where any property liable to be sold under the execution has been taken, public notice, signed by himself, of the time and place within the division when and where it will be exposed for sale; and the notice shall describe the property taken. 10 Edw. VII. c. 32, s. 185.

Bailiff after seizure of goods to endorse date of seizure and give notice of sale.

185. The property so taken shall not be sold until the expiration of eight days at least after the seizure thereof, unless upon the request in writing under the hand of the party whose property has been seized. 10 Edw. VII. c. 32, s. 186.

Goods not to be sold until eight days after seizure.

186. A clerk, bailiff or other officer of the court shall not, directly or indirectly, purchase any property at any sale made by a bailiff under legal process, and every such purchase shall be absolutely void. 10 Edw. VII. c. 32, s. 187.

Bailiff and other officers not to purchase goods seized.

187. Where a bailiff has seized property under an execution or attachment, and the action is afterwards settled between the parties, or the defendant makes an assignment for the general benefit of his creditors, the bailiff, until his fees and disbursements are fully satisfied, shall have a lien therefor upon so much of the property as will reasonably satisfy the same; but in the event of a dispute as to the proper amount of the fees and disbursements, the amount claimed therefor may be paid into court until the proper amount shall be certified by the Judge, and on such payment into court the lien shall cease. 10 Edw. VII. c. 32, s. 188.

Right of bailiff to fees on execution, etc., when action settled or assignment made.

TRANSCRIPT.

188.—(1) The clerk, upon the application of a person having an unsatisfied judgment in his favour, shall prepare a transcript of the judgment in the prescribed form, and shall send the same to the clerk of any other Division Court, whether in the same or any other county, with a certificate at the foot thereof signed by him, sealed with the seal of the court, and addressed to the clerk of the court to whom it is to be sent, stating the amount unpaid upon the judgment, the date at which the same was recovered, and the post-office address of the person applying for the transcript, and the clerk to whom the certificate is addressed shall, on the receipt of the transcript and certificate, enter the transcript and the amount due on the judgment according to the certificate in a

Clerk to prepare transcript of unsatisfied judgment for transmission to any other Division Court.

book to be kept in his office for the purpose; and all proceedings may be taken for enforcing the judgment in such last mentioned court.

Proceedings stayed in office from which transcript of judgment is issued.

(2) After a transcript has been issued under this section, no further proceedings shall be had in the court from which the transcript issued without an order from the Judge, unless the person who obtained the transcript, or his agent, shall make and file with the clerk an affidavit stating:—

(a) That the judgment remains unsatisfied in whole or in part;

(b) That the execution issued out of the court to which the transcript was sent has been returned *nulla bona*, or that he believes the judgment debtor has not sufficient goods in the Division of that court to satisfy the judgment,

and upon the affidavit being filed, the clerk may issue such other process as the applicant may be entitled to and may direct. 10 Edw. VII. c. 32, s. 189.

DEATH, ETC., OF BAILIFF WHILE EXECUTION OR ATTACHMENT UNEXECUTED.

Continuation of proceedings after death of bailiff.

189.—(1) In the event of the death, resignation, suspension or removal of a bailiff, after action taken by him under an execution or attachment, the proceedings may be continued by his successor.

Securities given to the bailiff.

(2) The benefit of all securities given to the bailiff shall enure to his successor in office. 10 Edw. VII. c. 32, s. 190.

EXAMINATION OF JUDGMENT DEBTORS.

Judgment debtors may be examined at the instance of their creditors.

190.—(1) A party having an unsatisfied judgment may procure from the court out of which execution might issue, if the judgment debtor resides or carries on business within the limits of that court, a summons in the prescribed form.

Affidavit required before judgment summons.

(2) Before the summons is issued the judgment creditor, or his agent, shall make and file with the clerk an affidavit stating:—

(a) That the judgment remains unsatisfied in whole or in part; and

(b) That the deponent believes that the judgment debtor sought to be examined is able to pay the amount due in respect of the judgment or some part thereof, or that he has rendered himself liable to be committed to gaol under this Act.

(3) The summons shall be served personally upon the judgment debtor, and if he appears he may be examined upon oath as to any and what debts are owing to him and touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which formed the subject of the action, and as to the means and expectation he then had, and as to the property and means he still has of discharging the judgment debt, and as to the disposal he has made of any property. Examination of judgment debtor.

(4) The party obtaining the summons and all witnesses whom the Judge thinks requisite may be examined upon oath, touching the inquiries. Examination of witnesses.

(5) The examination shall not be held in open court unless the Judge so directs. Place of examination.

(6) The costs of the summons and of all proceedings thereon shall be costs in the action, unless the Judge otherwise directs. Costs.

(7) If after the examination the Judge makes no order against the party examined, no further summons shall issue out of the same court against him at the suit of the same or any other creditor, except upon an affidavit satisfying the Judge that since the examination the party has acquired the means of paying, or, upon facts not before the court upon the examination, that he did not then make a full disclosure of his estate, effects and debts. 10 Edw. VII. c. 32, s. 191. Party examined and discharged not to be again summoned. Exception.

191. If the party summoned—

(a) Does not attend as required by the summons, or give a sufficient reason for not attending; or When judgment debtor may be committed to gaol.

(b) Attends and refuses to be sworn or to answer such questions as in the opinion of the Judge are proper,

or, if it appears to the Judge, by the examination of the party or by other evidence, that he

(c) Obtained credit from the judgment creditor or incurred the debt or liability under false pretences, or by means of fraud or breach of trust; or

(d) Has made or caused to made any gift, delivery or transfer of any property, or has removed or concealed the same with intent to defraud his creditors or any of them; or

(e) Had, when or since judgment was obtained against him, sufficient means and ability to pay the debt or damages or costs recovered against him, either altogether or by the instalments which the court, in which the judgment was obtained, ordered with-

out depriving himself or his family of the means of living, and that he has wilfully refused or neglected to pay the same as ordered,

the Judge may order him to be committed to the common gaol of the county in which he resides or carries on business, for any period not exceeding forty days. 10 Edw. VII. c. 32, s. 192.

When party may be committed for non-attendance.

192.—(1) A party failing to attend shall not be liable to be committed for the default, unless the Judge is satisfied that his non-attendance is wilful.

Costs allowed him in certain cases.

(2) If at the hearing it appears to the Judge by the examination of the party, or otherwise, that he ought not to have been summoned, or if the judgment creditor or his agent does not appear, the Judge shall award the party summoned compensation for his trouble and attendance, to be recovered against the judgment creditor in the same manner as a judgment of the court. 10 Edw. VII. c. 32, s. 193.

Judgment summons where principal and interest sued for separately.

193. Where a judgment has been recovered in an action which, but for subsection 2 of section 67, could not have been recovered in the Division Court, the judgment debtor shall not be committed where a judgment debtor could not have been committed upon or in respect of a judgment recovered in a higher court, or upon or by reason of an examination upon such a judgment. 10 Edw. VII. c. 32, s. 194.

Warrant of Commitment.

194.—(1) Where an order of commitment has been made, the clerk shall issue, under the seal of the court, a warrant of commitment in the prescribed form directed to the bailiff of any court within the county, upon which shall be endorsed a memorandum of the amount upon payment of which the party is entitled to be discharged from custody, and the bailiff may, by virtue of the warrant, take the party and deliver him to the keeper of the gaol in which he has been directed to be imprisoned.

Constables, etc., to execute warrants.

(2) All constables and other peace officers within their respective jurisdictions shall aid in the execution of the warrant, and the keeper of the gaol shall receive and keep the party therein until discharged under the provisions of this Act, or otherwise, in due course of law. 10 Edw. VII. c. 32, s. 195.

When debtor in custody shall be discharged.

195. A party may be discharged out of custody—

- (a) By order of the Judge, or
- (b) When he has paid to the keeper of the gaol the amount endorsed on the warrant, or
- (c) Upon the certificate of the clerk that such amount has been paid to him. 10 Edw. VII. c. 32, s. 196.

196.—(1) The Judge may rescind or alter the order for payment, and make any further or other order for the payment of the debt or damages recovered and costs forthwith, or by instalments, or in any other manner that he thinks reasonable. Judge may rescind order and may alter and modify the same.

(2) The Judge may rescind or alter any order of commitment made by him, whether or not the same has been acted on. 10 Edw. VII. c. 32, s. 197.

197. Imprisonment under this Act shall not extinguish the judgment, or protect the judgment debtor from being summoned anew and imprisoned for any new fraud or other default rendering him liable to be imprisoned, or deprive the judgment creditor of the right to execution on his judgment. Debt not to be extinguished by imprisonment. 10 Edw. VII. c. 32, s. 198.

198. Every clerk, on or before the 15th day of January in every year, shall make to the Inspector a return showing the number of judgment debtors who, during the twelve months ending the 31st day of December next preceding, were ordered to be committed under each of the heads mentioned in section 192. Annual return of commitment of judgment debtors. 10 Edw. VII. c. 32, s. 199.

ABSCONDING DEBTORS.

199. Where a person indebted in a sum not less than \$4, either for debt or damages arising upon a contract, and recoverable in or upon a judgment of a Division Court, Absconding debtors.

(a) Absconds from Ontario, leaving personal property liable to seizure under execution for debt in any county; or

(b) Attempts to remove such personal property out of Ontario or from one county to another therein with intent to defraud; or

(c) Keeps concealed to avoid service of process,

the clerk of any division court, upon the application of the creditor, and upon his filing an affidavit in the prescribed form made by him, his agent, or servant, shall issue a warrant in the prescribed form, directed to the bailiff of the court from which the same issued, or to a constable of the county, commanding him to attach, seize, take and safely keep all the personal estate and effects of such person within the county, liable to seizure under execution for debt, or a sufficient part thereof to secure the sum mentioned in the warrant, with costs, and to return the warrant forthwith to the court. Warrant for attachment. 10 Edw. VII. c. 32, s. 200.

When County Judge or Justice of the Peace may issue attachments, etc.

200. The affidavit in the next preceding section mentioned may be taken before a Judge or a Justice of the Peace, and, upon the same being filed with him, he may issue a warrant under his hand and seal in the form mentioned in the next preceding section, and he shall forthwith transmit the affidavit to the clerk of the court within whose division the same was taken, to be by him filed. 10 Edw. VII. c. 32, s. 201.

Bailiff or constable to seize and make inventory.

201. Upon receipt of a warrant by the bailiff or constable, and upon being paid his lawful fees, including the fees for appraisement, he shall forthwith execute the warrant, and make a true inventory of all the estate and effects which he seizes and takes by virtue thereof, and shall, within twenty-four hours after seizure, call to his aid two freeholders, who, being first sworn by him to appraise the estate and effects seized, shall then appraise the same, and the bailiff or constable shall forthwith return the inventory attached to the appraisement to the clerk. 10 Edw. VII. c. 32, s. 202.

Proceedings may be continued in same court.

202. In an action commenced by attachment the proceedings may be conducted to judgment and execution in the court of the division within which the warrant issued. 10 Edw. VII. c. 32, s. 203.

Proceedings commenced before attachment.

203. Where proceedings have been commenced before the issue of an attachment they may be continued to judgment and execution in the court in which the proceedings were commenced. 10 Edw. VII. c. 32, s. 204.

Property attached may be sold under execution.

204. The property attached upon a warrant of attachment shall be liable to seizure and sale under the execution to be issued upon the judgment, and if the property was perishable and has been sold, the proceeds thereof shall be applied in satisfaction of the judgment. 10 Edw. VII. c. 32, s. 205.

Plaintiff not to divide cause of action.

205. A plaintiff shall not divide a cause of action into two or more actions for the purpose of bringing the same within the provisions of the next six preceding sections, but a plaintiff having a cause of action for which, but for the amount of the claim, an attachment might be issued may abandon the excess, and the judgment shall be a full discharge of all demands in respect of the cause of action, and the entry of judgment shall be made accordingly. 10 Edw. VII. c. 32, s. 206.

If several attachments issued. Rev. Stat. c. 82.

206. Subject to the provisions of *The Absconding Debtors Act*, where there are several attachments against a party, the proceeds of the property attached shall not be paid over to the attaching creditors according to priority, but shall be rateably distributed among such of them as obtain judgment against the debtor, in proportion to the amounts actually due upon their judgments; and no distribution shall take place until, in the opinion of the Judge, reasonable time has been allowed

to the creditors to proceed to judgment. 10 Edw. VII. c. 32, s. 207.

207. Where the proceeds of the property are insufficient to satisfy the claims of all the attaching creditors, a creditor shall not be allowed to share, unless he sued out his attachment and gave notice thereof to the clerk of the court out of which the first attachment issued or into which it was returnable, within one month next after the issue of the first attachment. 10 Edw. VII. c. 32, s. 208.

If goods insufficient to satisfy claims of all attaching creditors.

208.—(1) Where property is attached under the provisions of the next nine preceding sections by a constable, it shall be forthwith handed over to the bailiff of the court out of which the warrant of attachment issued, or into which it was made returnable.

Goods seized by constable to be delivered to bailiff.

(2) Property attached by a bailiff under the provisions of the next nine preceding sections, and the property delivered to him under the provisions of subsection 1, shall remain in custody of the bailiff; and he shall keep it until disposed of according to law. 10 Edw. VII. c. 32, s. 209.

Custody of goods seized under attachment.

209.—(1) Where a person against whom an attachment has issued, or any person on his behalf, executes and files in the court to which the attachment, or first attachment if there are more than one, has been returned, or is returnable, a bond with good and sufficient sureties, to be approved by the Judge or clerk, binding the obligors, jointly and severally, to the clerk, in double the appraised value of the property attached, with a condition that the debtor (naming him) will, whenever thereunto required by order of the Judge, pay into court a sum sufficient to satisfy the claims of all creditors who may be entitled to share in the proceeds of the property or the value of the property attached, or will produce the property to satisfy the judgments, the clerk may supersede the attachment, and the property attached shall be restored.

On what terms goods attached may be restored.

(2) Subject to the provisions of section 206, if, within one month after the property has been attached, the person against whom the attachment has issued, or some person on his behalf, does not appear and give such bond, execution may issue as soon as judgment has been recovered and the property attached, or so much thereof as may be necessary to satisfy the judgment and costs, may be sold for the satisfaction thereof, or if the property has been previously sold as perishable so much of the proceeds thereof as may be necessary may be applied to satisfy the judgment and costs. 10 Edw. VII. c. 32, s. 210.

Sale of goods if the debtor does not appear and give security.

Perishable goods.

210.—(1) Where a summons has not been served before the issue of a warrant of attachment, it may be served personally or by leaving a copy at the last place of abode or business.

Proceedings against debtors where process not previously served.

ness of the defendant with any grown person residing there, or by leaving the copy at such place if no grown person be there found.

Costs.

(2) If it appears to the Judge at the trial that the creditor who sued out an attachment had not reasonable or probable cause for taking the proceedings, the Judge shall order that no costs be allowed to the creditor. 10 Edw. VII. c. 32, s. 211.

Perishable goods how disposed of.

211. Subject to the provisions of *The Absconding Debtors Act*, where perishable property has been attached, the bailiff who has the custody thereof, the same having been first appraised, may, at the request of the attaching creditor, expose and sell the same at public auction to the highest bidder, giving at least eight days' notice at the office of the clerk and at two other public places within his division, of the time and place of sale, if the property attached will admit of being so long kept, otherwise he may sell the same at his discretion. 10 Edw. VII. c. 32, s. 212.

Creditors may be required to indemnify the defendant.

212.—(1) It shall not be compulsory upon the bailiff or constable to attach, or upon the bailiff to sell perishable property until the attaching creditor has given a bond to the defendant, with good and sufficient sureties to the satisfaction of the bailiff, in double the amount of the appraised value of the property, conditioned that the attaching creditor will repay the value thereof, together with all costs and damages incurred in consequence of the attachment and sale in case judgment be not obtained by him, and the bond shall be filed with the clerk.

Application of proceeds of sale.

(2) The money made shall be paid over by the bailiff to the clerk, to be dealt with in the manner hereinbefore provided. 10 Edw. VII. c. 32, s. 213.

Enforcing security given under Act.

213.—(1) A bond given in the course of any proceeding under this Act may be sued on in any Division Court of the county wherein the same was executed, notwithstanding that the penalty in the bond exceeded the sum of \$100.

Delivery of bond to party entitled.

(2) The bond shall be delivered to any person entitled to it, upon the order of the Judge, to be enforced or cancelled as the case may require. 10 Edw. VII. c. 32, s. 214.

CLAIMS OF LANDLORDS AND OTHERS IN RESPECT TO GOODS SEIZED.

Interpretation.

214. In this and the next following six sections,

"Landlord,"

(a) The word "landlord" shall include the person entitled to the immediate reversion of land, or, if it be held in joint tenancy, coparcenary or tenancy in common, any one of the persons entitled to the reversion; and

- (b) The word "agent" shall mean any person usually employed by the landlord in the letting of land or in the collection of the rents thereof, or specially authorized by writing under the hand of the landlord to act in any particular matter. 10 Edw. VII. c. 32, s. 215. "Agent."

215.—(1) Where a claim is made to or in respect of property or security taken in execution or attached under the process of a Division Court, or the proceeds or value thereof, by a landlord for rent, or by a person other than the party against whom the process issued, then, subject to the provisions of *The Absconding Debtors Act*, upon application of the bailiff or officer charged with the execution of the process, either before or after an action has been brought against him, the clerk shall issue a summons calling before the court out of which the process issued, or the court for the division in which the seizure or attachment under the process was made, the party who issued the process and the person making the claim, and thereupon any action which has been brought in the Supreme Court or in any other court in respect of the claim, shall be stayed. Claims of landlords, etc., to goods seized in execution, how to be adjusted.

(2) The court in which the action has been brought, or a Judge thereof, on proof of the issue of the summons, and that the property or security was taken in execution or upon attachment, may order the party bringing the action to pay the costs of all proceedings had in the action after the issue of the summons out of the Division Court. Costs.

(3) The Judge shall adjudicate upon the claim, and make such order between the parties in respect thereof, and of the costs of the proceedings as to him may seem just, and shall also adjudicate between the parties, or either of them, and the bailiff or officer in respect of any claim for damages arising out of the execution of the process by the bailiff or officer, although the amount of the damages claimed or awarded is beyond the jurisdiction of a Division Court, and may make such order in respect thereof, and of the costs of any proceedings as to him may seem just. County Judge to adjudicate on claims.

(4) The order may be enforced in like manner as an order made in an action. Enforcing order.

(5) The Judge, upon the application of the execution or attaching creditor or the claimant, or the bailiff or officer, may grant a new trial as in other cases, and may in the meantime stay proceedings. New trial.

(6) Where the bailiff or officer has executions or attachments for different persons against the same property it shall not be necessary to make a separate application on each execution or attachment; but he may use the names of the Where more than one execution or attachment has issued.

execution or attaching creditors collectively, in the application, and the summons may issue in the name of the creditors as plaintiffs.

Rights of parties as to defence and as to costs.

(7) The parties and the bailiff or officer shall have the same rights of defence and counter-claim, including in all cases the right and liability to costs, as would exist had an action, within the jurisdiction of the court, been brought to recover the damages. 10 Edw. VII. c. 32, s. 216.

Provisions in relation to rents due to landlords.

216.—(1) The landlord of a tenement in or upon which property is taken under an execution, may, by notice in writing, signed by himself or his agent, stating the terms of the holding and the rent payable, delivered to the bailiff or officer making the levy, claim any rent due and in arrear at the time of the taking in execution not exceeding the rent of four weeks where the tenement has been let by the week, and not exceeding the rent for two terms of payment where the tenement has been let for any other term less than a year, and not exceeding in any case the rent for one year.

Notice of claim for rent.

(2) Notice of the claim may be given at any time before the return of the process, notwithstanding that the property may in the meantime have been removed from the premises upon which it was seized, and where the property of a tenant is sold within ten days after seizure, the money realized shall remain in court until the expiration of the ten days to answer the claim of the landlord; and where the money has been paid into court the notice may be directed to the clerk with like effect as if given to the bailiff or officer, before the sale of the property seized.

How the bailiff is to proceed.

(3) The bailiff or officer making the levy shall also distrain for the amount of the rent claimed, and the costs of the distress, but shall not sell the property, or any part thereof, until after the expiration of eight days after the distress.

Fees of bailiff in such cases.

Rev. Stat. c. 78.

(4) For every distress for rent in arrear the bailiff or officer shall be entitled to have as costs of the distress, instead of the fees allowed by this Act, the fees allowed by *The Costs of Distress Act*.

Sale where replevin made.

(5) If any replevin is made of the property distrained, so much of the property taken under the execution shall be sold as will satisfy the money and costs for which the execution issued and the costs of the sale, and the surplus of the sale, if any, and the property so distrained shall be returned as in other cases of distress for rent and replevin.

Priority of landlord's claim.

(6) An execution creditor shall not have his debt satisfied out of the proceeds of the execution and distress, or of the execution only, where the tenant replevies, until the landlord who conforms to the provisions of this Act has been paid the rent in arrear for the periods hereinbefore mentioned. 10 Edw. VII. c. 32, s. 217.

OFFENCES AND PENALTIES.

Contempt of Court.

217. If a person wilfully insults the Judge or any officer of a Division Court during his sitting or attendance in court, or interrupts the proceedings of the court, or creates a disturbance within the court room or within hearing of the court, any bailiff or officer of the court may, by direction of the Judge, take the offender into custody and bring him before the Judge, and the Judge may impose upon him a fine not exceeding \$20, and in default of immediate payment may, by warrant under his hand and seal, commit the offender to the common gaol of the county for a period not exceeding one month, unless the fine and costs with the expense attending the commitment are sooner paid. 10 Edw. VII. c. 32, s. 218. Contempt of Court.

Resisting Officers.

218.—(1) If a person interferes with a bailiff or officer, or his deputy or assistant, while in the execution of his duty, or makes or attempts to make a rescue of any property seized or attached under process of the court, he shall incur a penalty not exceeding \$20, to be recovered by order of the court, or on summary conviction before a Justice of the Peace, and shall also be liable to be imprisoned, by order of the court or Justice, for any term not exceeding three months. Interfering with bailiff.

(2) The bailiff or officer, or any peace officer, may take the offender into custody, with or without warrant and bring him before the court or Justice. 10 Edw. VII. c. 32, s. 219. Arrest of offender.

Misconduct of Clerks, Bailiffs, etc.

219.—(1) Upon a complaint in writing that a bailiff or officer, acting under colour or pretence of process of the court, is guilty of extortion or misconduct, or does not duly pay or account for all money levied or received by him by virtue of his office, the Judge may, at a sittings of the court, enquire into the matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary persons, and make such order thereupon for the repayment of any money extorted, or for the due payment of any money levied or received, and for the payment of such damages and costs to the person aggrieved, as he may think just. Misconduct of bailiffs and officers.

(2) In default of payment of the money ordered to be paid by the bailiff or officer within the time mentioned in the order for the payment thereof, the Judge may, by warrant under his hand and seal, cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of the distress and sale, and in default of such distress or summarily in the first instance, or where payment is not made forthwith, if so ordered, may commit the offender to the Enforcing order for payment by bailiff.

common gaol of the county for a period not exceeding three months, unless the money and costs are sooner paid. 10 Edw. VII. c. 32, s. 220.

Extortion.

220. If a clerk, bailiff, or other officer is guilty of extortion he shall, upon proof thereof before the court, be forever disqualified to hold any office of profit or emolument in a Division Court, and shall also be liable in damages to the party aggrieved. 10 Edw. VII. c. 32, s. 221.

Negligence of Bailiffs.

Bailiff neglecting duty in relation to execution.

221. If a bailiff, by neglect, connivance or omission, loses the opportunity of levying an execution or taking property under an attachment, or unduly delays to levy or attach, the Judge, upon complaint of the party aggrieved, and upon proof of the fact alleged, may order the bailiff to pay such damages as the party aggrieved appears to have sustained, not exceeding the sum for which the execution or attachment issued; and upon demand being made therefor, and on his refusal to satisfy the same, payment may be enforced by such means as are provided for enforcing judgments. 10 Edw. VII. c. 32, s. 222.

ENFORCING PAYMENT OF FINES.

Enforcing payment of fines.

222. A fine imposed by the Judge under authority of this Act may be enforced by his order in like manner as a judgment. 10 Edw. VII. c. 32, s. 223.

GENERAL PROVISIONS WITH REGARD TO ACTIONS FOR THINGS DONE UNDER THIS ACT.

Distress not to be deemed unlawful or persons making it trespassers by reason of defect in proceedings.

223. A levy or distress by virtue of this Act shall not be deemed unlawful, or the person making the same be deemed a trespasser, on account of any defect or want of form in any proceeding relating thereto, nor shall the person levying or distraining be deemed a trespasser from the beginning, on account of any irregularity afterwards committed by him; but the person aggrieved by the irregularity may recover full satisfaction for the special damage sustained by him. 10 Edw. VII. c. 32, s. 224.

GENERAL RULES AND ORDERS.

Board of County Judges.

224.—(1) The Lieutenant-Governor in Council may appoint five of the County Court Judges, who with the Inspector shall constitute a board which shall be called "The Board of County Judges."

Retired Judge may be appointed.

(2) For the purposes of this section a retired County Court Judge shall be deemed a County Court Judge.

Rules to be made by board.

(3) The Board may make rules for regulating any matter relating to the practice and procedure of the courts or to the duties of the officers thereof, or to the costs of proceedings

therein, and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying into effect the provisions of this Act and of all other Acts now or hereafter in force respecting such courts.

(4) There may be paid out of the Consolidated Revenue Fund to each member of the Board the sum of \$10 for every day's actual attendance at the meetings of the Board. 3-4 Geo. V. c. 18, s. 14 (4). Allowance to members.

(5) The Inspector shall not act as a member of the Board for the purpose of making rules or tariffs under any other Act. 10 Edw. VII. c. 32, s. 225. Proviso as to Inspector.

225.—(1) The board, or four members thereof, shall certify to the President of the Supreme Court all rules so made, and the President shall submit the same to the Judges of that Court. Board to certify rules to the President of the Supreme Court.

(2) The Judges of the Supreme Court, or a majority of them of whom the President shall be one, may approve, disallow, or amend any such rules. Such rules to be approved of by the Judges.

(3) The rules so approved shall be forwarded by the President to the Provincial Secretary who shall lay the same before the Assembly. Laying before Assembly.

(4) Notice that the rules so approved have been received by the Provincial Secretary shall be published in the *Ontario Gazette*, and from and after the first publication of the notice the rules shall come into operation and have the same force and effect as if they had been made and included in this Act. Notice of approval to be published in Gazette.

(5) The Lieutenant-Governor may direct the Treasurer of Ontario to pay out of the Consolidated Revenue Fund the expenses connected with the making, approval and printing of the rules. 10 Edw. VII. c. 32, s. 226. Expenses provided for.

226.—(1) In cases not expressly provided for by this Act or by the rules, the Judge may, in his discretion, adopt and apply the general principles of practice in the Supreme Court to actions and proceedings in the Division Courts. Practice of the High Court may be followed in unprovided cases.

(2) Nothing herein contained shall authorize the taxation or allowance of costs to any officer of the court, other than those provided for by this Act, or in the tariff of fees authorized by the Board of County Judges. 10 Edw. VII. c. 32, s. 227. Limitation as to costs.

227. The existing rules made by the Board of County Judges, except in so far as they are inconsistent with the provisions of this Act, are hereby confirmed. 10 Edw. VII. c. 32, s. 228. Existing Rules confirmed.

PROCEEDINGS NOT TO BE SET ASIDE FOR MATTERS OF FORM.

Defects
in form.

228. No proceedings shall be quashed or vacated for any matter of form. 10 Edw. VII. c. 32, s. 229.

PART II.

APPLICABLE ONLY TO PROVISIONAL JUDICIAL DISTRICTS.

TRIAL BY JURY.

Who liable to
serve as
jurors.

229. Unless exempt under *The Jurors' Act* all male persons between twenty-one and sixty years of age who reside in the division, and who are subjects of His Majesty by birth or naturalization, may be summoned to serve as jurors at any Division Court. 10 Edw. VII. c. 32, s. 230.

Who to select
jurors.

230. The clerk and a Justice of the Peace resident in the division, or in case there is no Justice of the Peace so resident, then a Justice of the Peace residing in an adjoining division, shall select the persons to serve as jurors for the trial of actions required to be tried by or before a jury. 10 Edw. VII. c. 32, s. 231.

Deposit by
person
requiring.

231. The party applying for a jury shall deposit with the clerk for the expenses of such jury the sum of \$6, and each juror who attends shall be paid by the clerk the sum of 50 cents. 10 Edw. VII. c. 32, s. 232.

JURISDICTION.

Jurisdiction of
Courts.

232. The courts, in addition to the jurisdiction conferred by Part I., shall have jurisdiction in personal actions otherwise within the jurisdiction of a Division Court where the amount claimed does not exceed \$100. 10 Edw. VII. c. 32, s. 233.

ORDER FOR ARBITRATION ON CONSENT.

Matters in dis-
pute not over
\$800 may be
referred
by judge with
consent to
arbitration.

233.—(1) The Judge may, with the consent in writing of the parties, order an action with or without other matters in dispute between the parties and within the jurisdiction of the court as to subject-matter, irrespective of amount if not exceeding \$800, to be referred to arbitration to such persons, and in such manner and on such terms as he thinks just.

Application of
Part I.

(2) All the provisions of Part I, as to arbitration shall in other respects apply to a reference under this section. 10 Edw. VII. c. 32, s. 234.

TRIAL BY JUDGE ON CONSENT.

Parties may
agree that the
Judge shall
try any matter
not over \$800.

234.—(1) If the parties agree by writing signed by them to refer causes of action, claims and demands to a Judge and that he may try and determine the same, the Judge shall have

power and jurisdiction so to do, if the subject matter in dispute does not exceed \$800 in amount, and is otherwise within the jurisdiction of a Division Court.

(2) The agreement shall be in duplicate, and one of the duplicates shall be filed with the Judge and the other with the clerk of the court in which the action is to be tried, and the court shall thereupon have jurisdiction in respect of the matter referred. Submission to be made in duplicate.

(3) Upon the agreement being filed the plaintiff may enter his claim in such division, and sue out a summons thereupon as in ordinary cases, and the proceedings in the action may be conducted to judgment and execution, irrespective of the amount recovered if it does not exceed \$800, in the same manner as other actions in such court. 10 Edw. VII. c. 32, s. 235. May be filed and proceedings thereon had to judgment in the Division Court.

APPEAL.

235.—(1) An appeal shall lie to a Divisional Court from a judgment under the next preceding section and from an order setting aside an award made pursuant to a reference made under the provisions of section 233. Appeal.

(2) The provisions of Part I. as to appeals shall apply to an appeal under this section. 10 Edw. VII. c. 32, s. 236. Application of Part I.

236. Upon an application for a new trial, in an action wherein either party may appeal, personal service may be effected, or all papers requiring service may be delivered to the clerk of the court where the action was tried, or left at his office for the person entitled thereto, and the clerk shall forthwith send by registered post all such papers to the person entitled to the same or his agent. 10 Edw. VII. c. 32, s. 237. Service on application for new trial.

FORM 1.

(Section 26.)

COVENANT BY CLERK OR BAILIFF.

Know all men by these presents, that we *J. B.*, Clerk (or Bailiff as the case may be) of the *Division Court*, in the County (or United Counties or District) of *S. S.*, of *in the said County or District of* (Esquire), and *P. M.*, of

in the said County or District of *(Gentleman)*
do hereby jointly and severally for ourselves, and for each of our heirs, executors and administrators, covenant and promise that *J. B.*, Clerk (or Bailiff) of the said Division Court shall duly pay over to every person entitled to the same, all such moneys as he shall receive by virtue of the said office of Clerk (or Bailiff) and shall and will well and faithfully do and perform the duties imposed upon him as such Clerk (or Bailiff) by law, and shall not

misconduct himself in the said office to the damage of any person being a party in any legal proceeding; (*in the case of a Clerk's covenant insert*: and shall pay over to any Bailiff or Bailiffs of the Division Courts the fees to which he or they may become entitled under the tariff of fees, unless where the Clerk and the Bailiff otherwise agree in writing); nevertheless, it is hereby declared that no greater sum shall be recovered under this covenant against the several parties hereto than as follows, that is to say:

Against the said <i>J. B.</i> in the whole,	— dollars.
Against the said <i>S. S.</i> in the whole,	— dollars.
Against the said <i>P. M.</i> in the whole,	— dollars.

In Witness Whereof, we have to these presents set our hands and seals, this day of 190 .

Signed, sealed and delivered, }
in the presence of

10 Edw. VII. c. 32, Form 1.

FORM 2.

(Section 36.)

PROCEDURE BOOK.

No	Division Court of the 19	the	day of	19
	Ensuing Sittings	rs.		
19	of		of	
			No. of initial letter of item of tariff.	Bailiff Clerk. \$
	Received particulars of plaintiff's claim () for \$, and \$ towards costs Issued () summons to			
	Summons ret'd. Served the day of 19 , by miles,			
	The defendant having been served with special summons and particulars of claim, and not disputing the same,			
	it is adjudged that the plain- tiff recover \$ for debt, and \$ for costs.			

Clerk.

10 Edw. VII. c. 32, Form 2.

FORM 3.

(Section 36.)

FOREIGN PROCEDURE BOOK.

Division Court of the

No.

28.

19

Received summons from County of	Division Court, Rec.	
Issued summons to Bailiff	Aff.	
Summons ret'd. Served the	day of	
by	Post.	
Ret'd to Clerk of County of	Division Court, Bailiff's fees. Miles Ser. Att.	

10 Edw. VII. c. 32, Form 3.

FORM 4.

(Section 155)

SUMMONS IN GARNISHEE PROCEEDINGS.

No. , A.D. 19 .

In the Division Court, of the
District of

Between A. B., Primary Creditor,
and
C. D., Primary Debtor,
and
E. F., Garnishee.

To the above-named Primary Debtor and Garnishee:—

Take notice that the above-named Primary Creditor claims from you, the Primary Debtor, dollars, as shown by his particulars of claim herewith. If the amount of the claim with lawful costs be paid to the clerk of this court within days from the service hereof upon you, the Primary Debtor, no further proceedings shall be taken.

Unless within days after the service of this summons on you, the Primary Debtor, you enter with the clerk of this court a notice in writing that you intend to dispute the claim, the clerk may enter judgment and issue execution against you.

In case you, the Primary Debtor, give such notice disputing the claim, the action will be tried at the sittings of this court to be held at in the said County or District of next after the expiration of days from the time this summons is served on you and the sittings of the court are set forth below.

Given under the seal of the court, this
A.D. 19 .

day of

G. H.,
Clerk.

NOTICES AND WARNINGS TO PRIMARY DEBTOR AND GARNISHEE.

No. 1. If the primary debtor disputes the primary creditor's claim, or any part of it, he must leave with the clerk, within days after the day of the service hereof, a notice to the effect that he disputes the claim, or if not the whole claim, how much he disputes, in default whereof final judgment may be signed for the whole claim, or such part as is not disputed at any time within one month after the return of the summons, or afterwards by leave of the Judge, without prejudice to the primary creditor's right to recover for the remainder of the claim.

No. 2. If the primary debtor desires to set off any demand or counterclaim against the primary creditor at the trial or hearing, or to take the benefit of any statute of limitations or other statute, notice thereof in writing together with the particulars of the set-off or counterclaim must be left with the clerk of the court and served on the primary creditor, or left at his usual place of abode, if he is living within the division, not less than five days before the day on which the action will be tried, and in case the primary creditor does not reside within the division such notice and particulars must be left with the clerk for him.

No. 3. On the day of trial the primary debtor must bring all the books and papers necessary to prove his case, or in any way connected with it or with his transactions with the primary creditor.

No. 4. Summonses for witnesses and the production of documents may be obtained at the office of the clerk upon payment of the proper fee.

No. 5. The ensuing sittings of the court will be held as follows, viz.:

At o'clock a.m., on Monday, the day of
A.D. 19 , at o'clock a.m., on Tuesday, the
day of , A.D. 19 , etc.

(Here may be inserted the time of one or more subsequent sittings specifying the hour of the day of the week and month, plainly written in words at full length, and not expressed by figures or contraction of words.)

No. 6. In any case in which an order may be made changing the place of trial, application must be made therefor to the judge of the court within eight days after the day of service hereof (where the service is required to be ten days before the return) or within twelve days after the day of such service (where the service is required to be fifteen days or more before the return).

No. 7. The garnishee is entitled to set up any statutory or other defence or set-off, or to dispute or admit liability in whole or in part, and the garnishee and all other persons interested in or in any way affected by the proceedings may also show any other just cause why the debt sought to be garnisheed should not be paid to or applied in or towards satisfaction of the claim of the primary debtor, and if they desire to do so they must file with the clerk notice thereof with particulars of such defence or set-off, or an admission of the amount owing or accruing from them, or either of them, within eight days after the service of the summons.

No. 8. You, the said garnishee, are hereby notified that from and after the time of the service of this summons on you all debts owing or accruing from you to the above-named primary debtor, are attached, and if you pay the same otherwise than into court, you will be liable to re-pay it in case the court so orders.

No. 9. In the absence of any notice of such defence or set-off the judge may in his discretion give judgment against you or either of you.

If the debt sought to be garnisheed is for wages or salary add as follows:—

The debt alleged to be due by the Primary Debtor to the Primary Creditor was (or was not as the case may be) incurred for board or lodging.

And when the primary debtor is unmarried and has no family depending upon him for support, add

The primary debtor is an unmarried person having no family depending upon him for support.

No. 10. The primary debtor resides at the _____ of _____, in the Province of Ontario, and his occupation in the service of the garnishees is that of an engine driver (or as the case may be) on the railway of the garnishees (the Grand Trunk Railway Company of Canada) and is occupied as such on said railway between the cities of Toronto and Hamilton (or as the case may be).

10 Edw. VII. c. 32, Form 6.

FORM 5.

(Section 173.)

EXECUTION AGAINST GOODS.

No.

A.D. 19 _____,

In the
District of _____

Division Court of the _____

County of _____ or

Between A. B., Plaintiff,
and

C. D., Defendant.

Whereas on _____ day of _____ A.D. 19 _____, the _____ recovered in the said court judgment against the _____ for _____ dollars for debt (or damages) and _____ dollars for costs which remains unsatisfied (when the judgment has been revived, add, "and on the _____ day of _____ A.D. 19 _____, the said judgment was duly revived.") You are hereby required to levy of the goods and chattels of the _____ in the said County or District _____ (not exempt from execution) the said moneys amounting together to the sum of _____ dollars and interest thereon at the rate of five per cent. per annum from the _____ day of _____ A.D. 19 _____, and your lawful fees so that you may have the same immediately after the execution hereof and pay same over to the Clerk of this Court for the _____.

Given under seal of the Court, this _____ day of _____ A.D. 19 _____.

X. Y.,
Clerk.

To V. W.

Bailiff of said Court.

Judgment	\$
Interest .....	.....
Subsequent costs .....	.....
This execution .....	.....

Levy the sum of\$ _____,
and your lawful fees upon this precept.

10 Edw. VII. c. 32, Form 4.

FORM 6.

(Section 182.)

EXECUTION AGAINST LANDS.

In the
District of

Division Court of the **Count or**

Between A. B., Plaintiff,

and

C. D., Defendant.

Whereas, on the day of , A.D. 19 , the plaintiff recovered in the said Court, judgment against the defendant for \$ for debt, and \$ for costs of suit, which remain unsatisfied (*when judgment has been revived add "and on the day of , A.D. 19 , the said judgment was duly revived."*) You are hereby required to levy of the lands and tenements of the defendant in the said county, the said moneys, amounting together to the sum of \$ and interest thereon at the rate of five per cent. per annum, from the day of A.D. 19 , together with your own fees, poundage and incidental expenses; so that you may have the same immediately after the execution hereof, and pay the same over to the Clerk of this Court for the plaintiff.

Given under the seal of the Court, this day of , A.D. 19 .

Z. Y.,
Clerk.

To V. W.,
Sheriff of the

County or District of
10 Edw. VII. c. 32, Form 5.

4. JURORS AND JURIES.

CHAPTER 64.

An Act respecting Jurors and Juries.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Jurors' Act*. 9 Edw. VII. Short title. c. 34, s. 1.

INTERPRETATION.

2. In this Act,

- | | |
|--|------------------------------|
| (a) "County" shall include District. | Interpretation.
"County." |
| (b) "County Court" shall include District Court. | "County Court." |
| (c) "County Selectors" shall include District Selectors. | "County Selectors." |
| (d) "Sheriff" shall include a Coroner, an Elisor and every other officer to whom the return of jury process belongs. | "Sheriff." |
- 9 Edw. VII. c. 34, s. 2.

QUALIFICATIONS, EXEMPTIONS, AND DISQUALIFICATIONS OF JURORS.

3.—(1) Subject to the provisions of section 44, unless Who qualified and liable to serve.
exempted or disqualified, every male person of the age of twenty-one years or upwards, being a British subject by birth or naturalization and in the possession of his natural faculties, and not infirm or decrepit, who or whose wife is assessed upon the last revised assessment roll as owner or tenant in respect of real property, of the value of not less than \$600 in cities and \$400 in towns, villages and townships shall be qualified and liable to serve as a juror on grand and petit juries in the High Court Division, and in all courts of civil or criminal jurisdiction within the county in which he resides.

(2) Where property is assessed as the property of two or more persons jointly, they shall be treated as if severally assessed for equal proportions of the property. 9 Edw. VII. Joint proprietors to be deemed equally interested.
c. 34, s. 3.

4. The following persons shall be exempt from being returned and from serving as grand or petit jurors, and their Persons exempted from serving as jurors.

names shall not be entered on the rolls prepared and reported by the Selectors of Jurors as hereinafter mentioned:

- (a) Every person sixty years of age or upwards;
- (b) Every member of the Privy Council of Canada and of the Executive Council of Ontario;
- (c) Every member of the Senate and of the House of Commons of Canada and of the Assembly;
- (d) The Secretaries of the Governor-General and of the Lieutenant-Governor;
- (e) Every officer and other person in the service of the Governor-General or of the Lieutenant-Governor;
- (f) Every officer, clerk and servant of the Senate and of the House of Commons of Canada, of the Assembly, and of the Public Departments of Canada and of Ontario;
- (g) Every officer and servant of the Dominion and Provincial Governments;
- (h) Every Judge;
- (i) Every Police Magistrate;
- (j) Every Sheriff, Coroner, Gaoler and Keeper of a House of Correction or Lock-up House;
- (k) Every Sheriff's Officer and Constable;
- (l) Every Minister, Priest or Ecclesiastic under any form or profession of religious faith or worship;
- (m) Every Barrister and every Solicitor of the Supreme Court actually practising, and every Student at Law;
- (n) Every Officer of any Court of Justice;
- (o) Every Physician, Surgeon, Dental Surgeon, Pharmaceutical Chemist and Veterinary Surgeon qualified to practise, and in actual practice;
- (p) Every Officer in His Majesty's Army or Navy on full pay;
- (q) The Officers, Non-commissioned Officers and men of every Militia Corps; and a certificate under the hand of the Officer commanding any such corps shall be sufficient evidence of the service in his corps of any Officer, Non-commissioned officer or man for the then current year, and of his exemption;
- (r) Every Pilot and Seaman engaged in the pursuit of his calling;
- (s) Every Head of a Municipal Council;
- (t) Every Municipal Treasurer, Clerk, Collector, Assessment Commissioner, Assessor and Officer.

- (u) Every Professor, Master, Teacher, officer and servant of any University, College, Institute of learning or School;
- (v) Every Editor, Reporter and Printer of any public newspaper or journal;
- (w) Every person employed in the management, working of a Railway or Street Railway;
- (x) Every Telegraph and Telephone Operator;
- (y) Every Miller;
- (z) Every Fireman belonging to any Fire Department or Company, who has procured the certificate authorized by section 2 of *The Firemen's Exemption Act*, during the period of his enrolment and continuance in actual duty as such Fireman; and every Fireman who is entitled to and who has received the certificate authorized by section 5 of the said Act; but no Fireman shall be exempt from serving as a juror unless the captain or other officer of the Fire Department or Company, at least five days before the time appointed for the selection of jurors, notifies to the Clerk of the municipality the names of the Firemen belonging to his department or company, and residing within the municipality, who are exempt and claims exemption for them. 9 Edw. VII. c. 34, s. 4.

Rev. Stat.
c. 201.

5. Service at a Division Court shall not exempt a juror from serving at any other court. 9 Edw. VII. c. 34, s. 5.

Service at
Division
Courts not
to exempt.

6. No person convicted of treason, felony, perjury or subornation of perjury, unless he has obtained a free pardon, shall be qualified to serve as a grand or petit juror. 9 Edw. VII. c. 34, s. 6.

Convicted
persons
disqualified.

COUNTY SELECTORS.

7.—(1) The Judge of the County Court, the junior Judge thereof, the Mayor of any city situate in the county, the Warden, the Treasurer of the county, the Treasurer of any such city, and the Sheriff or in his absence the Deputy Sheriff, any three of whom shall be a quorum, shall be *ex-officio* selectors of jurors, from the jurors' rolls within their respective counties, and shall be known as "County Selectors."

County
Selectors.

(2) The Judge of the County Court, and in his absence the junior Judge, shall be the chairman, and in the absence of both, the county selectors may appoint a chairman *pro tempore*.

Chairman.

(3) In the County of York,

- (a) The Sheriff of the City of Toronto, or in his absence the Deputy Sheriff, shall be one of the county selectors;

Special provisions as to
County of
York.

- (b) The Judge of the County Court, the Sheriff of the County of York, or in his absence his Deputy, and the Warden and Treasurer of the county only shall attend when the selection is being made from the local municipalities of the county other than the City of Toronto;
- (c) The senior of the junior judges, the Sheriff of the City of Toronto, or in his absence his Deputy, and the Mayor and Treasurer of the City of Toronto only shall attend when the selection is being made for the City of Toronto;
- (d) The senior of the junior judges shall be the chairman of the city section of the county selectors, and in his absence the members of that section may appoint from among themselves a chairman *pro tempore*.

Casting vote.

(4) In case of an equality of votes the chairman of the meeting shall have a double or casting vote. 9 Edw. VII. c. 34, s. 7.

County Clerk or Clerk of County Court a Selector, when.

8. Where the County Treasurer is a practising barrister or solicitor he shall be disqualified from acting as a county selector, and the Clerk of the County Council or, if he is a practising barrister or solicitor, the Clerk of the County Court shall be a county selector in the stead of the County Treasurer. 9 Edw. VII. c. 34, s. 8.

Clerk of Peace to attend meetings of county selectors.

9. The Clerk of the Peace shall attend all meetings of the county selectors, and shall enter their proceedings and resolutions in a book kept for that purpose, but he shall have no voice in the selection of jurors, and shall not advise or express an opinion whether any name ought to be placed upon or omitted from the list of jurors. 9 Edw. VII. c. 34, s. 9.

Annual meeting of county selectors.

10. The county selectors shall assemble annually at the office of the Clerk of the Peace, or at the Court House, on the 15th day of September, for the purpose of determining the number of grand and petit jurors for the High Court Division and Inferior Courts respectively, which shall be returned by the local municipalities to the Clerk of the Peace, for service during the ensuing year. 9 Edw. VII. c. 34, s. 10.

Determining number of jurors for the year.

11. The county selectors shall at such meeting, by resolution, first determine and declare the number of grand and petit jurors respectively that will be required as jury panels for service at the courts during the ensuing year, and shall fix the total number of grand and petit jurors for the High Court Division and for the Inferior Courts which the local municipalities shall return at three times the number declared by the resolution to be required. 9 Edw. VII. c. 34, s. 11.

12. The county selectors shall then, by resolution, determine the number of grand and petit jurors for the High Court Division and for the Inferior Courts to be returned for each local municipality, and the number of persons on the voters' list of each municipality, marked as qualified to serve on juries, shall form an approximate basis for determining the number of jurors to be returned by each local municipality, and the Clerk of the Peace shall produce for the use of the county selectors the voters' lists delivered to him by the clerks of the local municipalities under the provisions of *The Ontario Voters' Lists Act*, or certified copies of such lists. 9 Edw. VII. c. 34, s. 12.

Determining number of jurors from each municipality.

Rev. Stat. c. 6.

13.—(1) The county selectors shall also, by resolution at such meeting, determine the number of petit jurors to be drafted and returned to any sittings of the High Court Division the Court of General Sessions of the Peace, and the County Court for the current or ensuing year.

County selectors to determine the number of petit jurors to be drafted and returned to each court.

(2) The Clerk of the Peace shall forthwith transmit to the central office of the High Court Division and to the Clerk of the County Court a certified copy of such resolution, and such copies shall be filed in such offices. 9 Edw. VII. c. 34, s. 13.

Copies of resolution to be transmitted and filed.

14. The county selectors may by resolution amend any resolution passed under the provisions of sections 10 to 13 and either increase or decrease the number of jurors to be selected and returned by the local municipalities, the number to be selected by the county selectors, or the number of petit jurors to be drafted and returned to any sittings of the High Court Division, the Court of General Sessions of the Peace, or the County Court, and in such case due notice thereof shall be given by the Clerk of the Peace to the persons entitled to notice of the original resolution. 9 Edw. VII. c. 34, s. 14.

Power to amend resolutions.

15. The Clerk of the Peace shall within five days after the meeting of the county selectors notify in writing the clerk of each local municipality of the number of grand and petit jurors respectively required to be returned from the municipality. 9 Edw. VII. c. 34, s. 15.

Clerk of the Peace to notify clerks of local municipalities.

SELECTION AND DISTRIBUTION OF JURORS FROM THE ASSESSMENT ROLL.

16. The head of the Council, the Clerk, the Assessment Commissioner and the assessors of every local municipality, any two of whom shall be a quorum, shall be *ex-officio* the local selectors of jurors for the municipality. 9 Edw. VII. c. 34, s. 16.

Certain municipal functionaries to be municipal selectors of jurors.

17.—(1) The local selectors shall meet annually on the 10th day of October, at the place where the meetings of the Municipal Council are usually held, or at such other place

When and where the selection shall be made.

within the municipality as may be appointed by the head of the Council, or during his absence, or a vacancy in the office, by the Clerk, for the purpose of selecting from the assessment roll the names of the persons qualified and liable to serve as jurors.

Principles
by which the
selectors are
to be
governed.

(2) The local selectors shall proceed *de die in diem* until the selection is completed, and shall select such persons as in their opinion, or in the opinion of a majority of them, are, from the integrity of their characters, the soundness of their judgment and the extent of their information, the most discreet and competent for the performance of the duties of jurors.

Assessment
rolls to be
produced.

(3) The Clerk, or the Assessment Commissioner, or assessors, or the other officer or person who has the actual charge or custody of the assessment roll for the year and the proper voters' list shall bring them to such meeting.

Selectors to
be sworn.

(4) The local selectors, before entering upon the performance of their duties, shall severally make and subscribe an oath in the form following:

The oath.

I, A. B., do swear (*or affirm, as the case may be*) that I will truly, faithfully and impartially, without fear, favour or affection, and to the best of my knowledge and ability, perform the duty of a local Selector of Jurors, and will select from the proper lists the requisite number of the most fit and proper persons to serve as Jurors for the year 19 .

Sworn (*or affirmed*) before me, at
the day of 19 .

(Signed)

C. D.

(Signed)

A. B.

which oath a justice of the peace, a commissioner for taking affidavits or a notary public may administer. 9 Edw. VII. c. 34, s. 17.

Manner in
which municipal
selectors
to make list
from which to
select jurors.

18.—(1) The local selectors shall, from the certified voters' lists for the municipality for the year, if the list has been certified, or if the same has not been certified, then from the list for the year published by the Clerk of the municipality, or if no such list has been published then from the last certified list, or if there is no certified list then from the last revised assessment roll, write down twice as many of the names of persons appearing by the last revised assessment roll to be possessed of the requisite property qualification and otherwise qualified to serve as jurors, as have been required by the county selectors to be selected and returned from the municipality; and the proper assessment roll shall in all cases be referred to by the local selectors for the purpose of determining who are exempt or disqualified from acting as jurors, and for such other purposes as are necessary in the discharge of their duty.

(2) The local selectors shall from year to year in making the selection proceed in alphabetical order, and shall write down consecutively in like order the names of all those persons qualified to serve as jurors and not exempt by law, until twice the total number required to be returned from the municipality is obtained, and at each subsequent annual meeting the local selectors shall begin at the letter next to that at which they left off in the next preceding year, and so on until they shall have gone through all the remaining letters of the alphabet, when they shall again begin with the letter A.

Selection to be made in alphabetical order.

Number.

(3) In the event of the local selectors obtaining the names of a sufficient number of qualified persons after they have entered upon, but not before they have exhausted the entire number of those qualified under any one letter, they shall at the next annual selection commence at the beginning of such letter, but shall not select from the names of any persons that were written down and selected from and returned in the next preceding year.

Procedure when number qualified under one letter not exhausted.

(4) Where, after discarding the names of those exempt or incapacitated, the number of qualified persons required by the local selectors to be selected from the municipality cannot be obtained, the local selectors shall place on the list the names only of such persons within the municipality as are qualified, and the number of jurors required shall be selected from such list, and the Clerk shall notify the county selectors of the facts, and they shall at their next and subsequent selections have regard thereto.

Who to be placed on list by municipal selectors where number of names of duly qualified persons not sufficient.

Clerk to notify county selectors of facts.

(5) The local selectors shall select at least two-thirds of the persons whose names they have so written down, being those who in their opinion are the best qualified to serve as jurors, and shall place a number opposite each name so selected.

Local selectors to select two-thirds of names on list.

(6) The inability of the local selectors, after discarding the names of those exempt or incapacitated, to find twice the number of persons having the proper qualification that have been required by the county selectors to be selected and returned, or to find the number required by the county selectors to be selected and returned shall not invalidate or render irregular the selection by them of the jury list or panel, or render the same liable to challenge. 9 Edw. VII. c. 34, s. 18.

Inability of municipal selectors to find numbers of names required by county selectors not to affect jury panel.

19. It shall not be necessary for the local selectors to refer to any name on the assessment roll which has not the letter J opposite to it in the voters' list, unless they suspect that names are not properly marked. 9 Edw. VII. c. 34, s. 19.

When selectors to question assessment roll.

20. In case of an equality of votes as to any question, the head of the Council or, in the case of his absence or a vacancy in the office, the Clerk, shall have a double or casting vote. 9 Edw. VII. c. 34, s. 20.

In case of an equality of votes among the selectors, who to have the casting vote.

Jurors to be
selected by
ballot.

21.—(1) The local selectors shall prepare as many ballot papers of uniform and convenient size as there are names selected, and the ballot papers shall be numbered to correspond with the numbers opposite to the names of the two-thirds selected, and they shall then proceed to select by ballot the number of jurors required by the county selectors.

Manner of
balloting.

(2) The manner of balloting shall be as follows:

(a) The local selectors shall place the ballot papers, correctly numbered, in a box or urn, and shall cause it to be shaken so as sufficiently to mix the ballot papers, and shall then openly draw from the box or urn indiscriminately one of the ballot papers, and declare openly the number on such ballot paper, whereupon the clerk, or one of the local selectors, shall immediately declare aloud the name of the person opposite whose name the corresponding number is placed on the list;

(b) The name and addition of the person who has been so selected shall then be written down, and the local selectors shall proceed in like manner until the necessary number has been completed. 9 Edw. VII. c. 34, s. 21.

List to be
distributed
into four
divisions.

22.—(1) When the local selectors have completed the selection, they shall, for the purpose of the report thereof, distribute the names of the persons so selected into four divisions; the first consisting of persons to serve as grand jurors in the High Court Division; the second of persons to serve as grand jurors in the Inferior Courts; the third of persons to serve as petit jurors in the High Court Division; and the fourth of persons to serve as petit jurors in the Inferior Courts, and shall make such distribution according to the best of their judgment with a view to the relative competency of the persons to discharge the duties required of them respectively.

In accordance
with requisition
of
county
selectors.

(2) The distribution among the four divisions shall be made so that each division shall contain the number of names required by the county selectors to be returned for such division. 9 Edw. VII. c. 34, s. 22.

Selectors to
make out a
duplicate
report, etc.

23.—(1) The local selectors shall make out in duplicate under their hands and seals, or under the hands and seals of such of them as perform the duty, a report, Schedule A., of their selection, ballot and distribution in which they shall set forth in alphabetical order the names of the persons selected.

Declaration to
be subjoined
to the report.

(2) There shall be subjoined to each duplicate a declaration, subscribed by them, stating, each for himself, that he has made the selection, ballot and distribution to the best of his judgment and information pursuant to this Act, and

without fear, favour or affection, gain, reward or hope thereof, other than such fees as he is lawfully entitled to receive for the same under the authority of this Act.

(3) One of such duplicates shall, on or before the 25th day of October, be deposited by the local selectors with the Clerk of the Peace and the other with the Clerk of the Municipality; and they shall be kept on file for the use and information of all who may have lawful occasion to examine or make use of them. Reports to be deposited. And kept on file.

(4) In case of the loss or destruction of a duplicate report, the officer in whose office the same was when so lost or destroyed shall, as soon as reasonably may be, procure from the officer to whom the legal custody of the other duplicate report belongs, a certified copy thereof, and shall file the same in his office; and such certified copy shall thenceforth be taken, received and acted upon in all respects as if it were the duplicate report so lost or destroyed. 9 Edw. VII. c. 34, s. 23. In case of loss, a copy of the duplicate report to be filed.

24. The Clerk shall enter in a book to be kept for that purpose the dates of the meetings of the local selectors, the persons present thereat and taking part therein, and the letters of the alphabet from which the selections are from year to year made, and, when the names in any letter have not been exhausted in any year, the Clerk shall enter in such book the names and additions of all persons whose names begin with the last mentioned letter that were written down and selected from and returned during the then current year. 9 Edw. VII. c. 34, s. 24. Record to be kept by clerk of municipality.

PREPARATION OF JURORS' BOOKS.

25. The Clerk of the Peace shall in each year procure a book, to be called "The Jurors' Book," and shall keep the same as nearly as may be in the form of Schedule B, and according to the directions contained in the notes to the schedule. 9 Edw. VII. c. 34, s. 25. Clerk of the Peace to prepare jurors' books in form of schedule B.

26. From the reports of the local selectors made to the Clerk of the Peace for such year, or from such of them as have been made on or before the 25th day of October, the Clerk of the Peace shall, between the 25th day of October and the 10th day of November in such year, transcribe into the jurors' book, in alphabetical order, the names and additions of all persons selected to serve as grand and petit jurors, as the same are set forth and distributed in such reports. 9 Edw. VII. c. 34, s. 26. In which shall be entered the names of grand and petit jurors.

27. The names shall be transcribed into the book in four rolls, the first to be called "Roll of Grand Jurors to serve in the High Court Division;" the second "Roll of Grand Jurors to serve in the Inferior Courts of Criminal Jurisdiction;" the Such books to contain four rolls of jurors.

third, "Roll of Petit Jurors to serve in the High Court Division;" and the fourth, "Roll of Petit Jurors to serve in the Inferior Courts of Criminal and Civil Jurisdiction." 9 Edw. VII. c. 34, s. 27.

Names and additions of jurors.

28. In each of the rolls shall be transcribed the names and additions of all persons selected, balloted and reported to serve as jurors. 9 Edw. VII. c. 34, s. 28.

Clerk of the Peace to prepare certified copies of books and deposit same, etc.

29.—(1) The Clerk of the Peace, on or before the 31st day of December in each year, shall cause a correct copy of such jurors' book, certified by him to be a true copy, to be made, and, in the County of York, deposited in the Central Office at Osgoode Hall; Toronto, and, in other counties, in the office of the Deputy Clerk of the Crown, or of the Local Registrar of the Supreme Court.

Where original Jurors' book is destroyed.

(2) In case of the loss or destruction of the original jurors' book, the Clerk of the Peace shall forthwith procure from the Central Office or from the Deputy Clerk of the Crown or the Local Registrar of the Supreme Court, as the case may be, a copy of the jurors' book so deposited, certified by the Clerk of Records and Writs, the Deputy Clerk of the Crown, or Local Registrar of the Supreme Court to be a true copy.

Duplicate Jurors' book to be certified.

(3) He shall thereupon cause to be proved before a judge of the County Court of the county the loss or destruction of the jurors' book; and the copy so certified, together with a certificate of the judge attached thereto that such loss or destruction has been proved to his satisfaction, shall thereupon be kept by the Clerk of the Peace in his office, and the same shall be received and used for all purposes in lieu of the original.

Entry of panels in duplicate Jurors' book.

(4) The Clerk of the Peace shall forthwith thereafter give notice to the Sheriff of such loss or destruction and of the procurement and deposit of the duplicate, and the Sheriff shall thereupon forthwith furnish copies of all panels of jurors drafted by him from the jury lists in the original book to the Clerk of the Peace, who shall thereupon enter the panels in the duplicate jurors' book, in like manner as the same were entered in the original. 9 Edw. VII. c. 34, s. 29.

DIVISION OF JURORS' ROLLS.

Division of Jurors' rolls according to municipalities.

30. The jurors' rolls shall each be divided into local municipalities, and the names within each municipality shall be arranged alphabetically, and all the names in each of such rolls shall be numbered consecutively. 9 Edw. VII. c. 34, s. 30.

How the rolls are to be certified.

31. To each of such rolls shall be subjoined a certificate of the Clerk of the Peace that he has carefully compared such

roll with the reports made by the local selectors of jurors for the year, as such reports were on file in his office on the 25th day of October in such year, and that the roll contains a true and correct transcript of the names and additions of all persons so reported to serve as jurors. 9 Edw. VII. c. 34, s. 31.

32.—(1) The Clerk of the Peace shall, on the first day of the sittings of the Court of General Sessions of the Peace held next after the 10th day of November in each year, bring into court and publicly deliver to the presiding judge the jurors' book so prepared by him for the then next year, together with the jurors' books for so many of the preceding years as may be required for proceeding with the preparation of the jury lists as hereinafter directed, and shall thereupon make oath in open court:

- (a) That he has carefully compared the jurors' rolls in the first mentioned jurors' book with the reports made by the local selectors, as the same were on file in his office on the 25th day of October next preceding, and that to the best of his knowledge and belief such jurors' rolls contain a true and correct transcript of the names and additions of all persons reported by the local selectors;
- (b) That the jurors' books secondly above mentioned are those on file in his office for the years to which they purport respectively to relate, and that all entries therein were truly and faithfully made, without fraud or collusion of any kind, and according to the very truth.

(2) If the Clerk of the Peace has not been in office during all the time that the jurors' books have been on file he shall make oath, in open court, that all entries made during the time that he has been in office have been truly and faithfully made without fraud or collusion of any kind, and according to the very truth, and that he verily believes that all other entries prior to his appointment were truly and faithfully made. 9 Edw. VII. c. 34, s. 32.

33. On the first occasion of bringing into court a jurors' book, there being no jurors' book for any preceding year, the oath to be made by the Clerk of the Peace shall be modified accordingly. 9 Edw. VII. c. 34, s. 33.

34. If the Clerk of the Peace is unable to make the oath required by subsection 2, of section 32, as to the entries made in any of such jurors' books previous to the time of such book coming into his custody, or has reason to suspect that any original entry in such book has, after its original completion, been erased, mutilated or altered, he shall in lieu of that part of the oath make oath that, as to such entry, he is unable to speak, but that from circumstances which have come to his

knowledge, or of which he has been informed, he has reason to doubt the correctness thereof, or has reason to suspect that an original entry has been erased, mutilated or altered.
9 Edw. VII. c. 34, s. 34.

The general sessions shall inquire into the matter.

35. Where the Clerk of the Peace has made an affidavit in the terms of the last preceding section, the Court of General Sessions of the Peace, immediately after the selection has been completed, either on the same or on a subsequent day, shall examine and enquire, by the oath of such persons as may be informed thereof, into the supposed incorrect entries, erasures, mutilations or alterations, their nature and extent, and by whom, when and for what purpose they were made, and shall punish the persons found to have made the same by fine or imprisonment in the discretion of the Court, and shall cause the incorrect entries, erasures, mutilations or alterations to be rectified, and the books restored to their original state as nearly as may be, according to the best information the Court has been able to obtain of or concerning the same. 9 Edw. VII. c. 34, s. 35.

The receipt
of the books,
etc., to be
certified by
the chairman.

36. The presiding judge shall thereupon certify under his hand and seal, in each of such books, the receipt thereof and the oath upon which the same has been received, and a remembrance of the same shall, by the proper officer, be also made in the minutes of the court. 9 Edw. VII. c. 34, s. 36.

SELECTION OF JURORS FROM JURORS' ROLLS.

Meeting of
County
Selectors.

37.—(1) The county selectors shall meet at the Court House on the third Tuesday in December, at ten o'clock in the forenoon, to proceed with the selection of jurors from the jurors' roll, and shall proceed *de die in diem* until the selection is completed.

Selectors to
be sworn.

(2) Before entering upon the performance of their duties the county selectors shall severally take and subscribe an oath in the following form:

Form of oath.

"I, A. B., do swear (or affirm as the case may be) that I will truly, faithfully and impartially, without fear, favour or affection, and to the best of my knowledge and ability, perform the duty of a County Selector, and will select from the proper rolls the requisite number of the most fit and proper persons to serve as Jurors for the year 19

"Sworn (or affirmed) before me at
the

day of _____, 19____
(Signed) _____

(Signed)

A. B."

How adminis-
tered and
recorded.

(3) A justice of the peace, a commissioner for taking affidavits or a notary public may administer such oath; and an entry thereof shall forthwith be made in the minute book of the county selectors. 9 Edw. VII. c. 34, s. 37.

38.—(1) The county selectors shall then proceed to select from the jurors' rolls the names of the requisite number of persons to serve as jurors for such year, being those persons who, in the opinion of the selectors or of a majority of them, are, from the integrity of their character, the soundness of their judgment, and the extent of their information the most discreet and competent for the performance of the duties of jurors, and in making such selection the county selectors may, if they think fit, select a proportion of the names for each jury list from each local municipality.

(2) The county selectors shall first select the grand jury list for the High Court Division, and when they have decided upon the selection of any person, his name and addition shall be forthwith inserted by the Clerk of the Peace in the minute book.

(3) The names of the persons so selected, alphabetically arranged, with their places of residence and additions, shall then be copied by the Clerk of the Peace into the jurors' book with the title "The Grand Jury List for the High Court Division," and shall be numbered consecutively, and also with the number of each name on the roll of grand jurors for the High Court Division.

(4) The Clerk of the Peace shall thereupon mark each of such names on the last mentioned roll as transferred to such jury list by a reference to the number belonging to it on that list.

(5) The list of names, so selected and transferred, shall be the grand jury list for the High Court Division for the year next after that in which the same has been so prepared.

39. After the grand jury list for the High Court Division has been completed, the required number of names of persons to serve as grand jurors in the Inferior Courts shall, in like manner, be selected and transferred to a similar list in the same book, with the title "The Grand Jury List for the Inferior Courts" for such next year, and the last mentioned list shall be the grand jury list for the Inferior Courts for the year next after that in which the same has been so prepared.

40. The required number of names shall in like manner be selected and transferred from the roll of jurors to serve as petit jurors in the High Court Division to the petit jury list for the High Court Division for such year, and lastly from the roll of jurors to serve as petit jurors in the Inferior Courts to the petit jury list for the Inferior Courts for such year.

Number to be
selected for
jury list.

41. The number to be selected from the jurors' rolls for a jury list shall be the number of grand jurors that the county selectors have determined to be requisite for the year, and of petit jurors for the High Court Division and Inferior Courts respectively the number theretofore determined by the county selectors to be requisite as the panels for the year, with one-fourth the number thereof added thereto. 9 Edw. VII. c. 34, s. 41.

Selection may
be made before
transfer to
jurors' books.

42. The county selectors may prepare any of the jury lists before the previous lists, or any of them, have been transferred to the jurors' book. 9 Edw. VII. c. 34, s. 42.

The chairman
and Clerk of
the Peace to
certify books.

43. So soon as the four jury lists have been so prepared the Chairman and the Clerk of the Peace shall certify under their hands in the jurors' book, immediately after each of such jury lists, that the same was prepared from the proper roll, as the law directs, and the date of its preparation; and the jurors' book, with the jury lists so certified, shall then be filed in the office of the Clerk of the Peace. 9 Edw. VII. c. 34, s. 43.

PROVISIONAL JUDICIAL DISTRICTS.

District
selectors.

44.—(1) In a provisional judicial district where there are two judges of the District Court, the judges and the sheriff, and where there is but one judge, the Judge, the Clerk of the District Court and the Sheriff shall be the District Selectors of jurors.

To have
powers and
duties of
county
selectors.

(2) Save as herein otherwise provided the district selectors of jurors shall perform the like duties and possess the like powers as county selectors of jurors, and the Sheriff and Clerk of the Peace of the district shall respectively perform the like duties and possess the like powers with respect to the selection, empanelling and summoning of jurors and otherwise as the Sheriff and the Clerk of the Peace of a county.

Local selectors.

(3) The provisions of this Act with regard to the selection and distribution of jurors by the local selectors of jurors shall apply to every local municipality in a provisional judicial district.

Number of
Grand and
Petit Jurors to
be returned.

(4) After the district selectors at the meeting to be held as provided in section 10 have determined and declared the number of grand and petit jurors respectively that will be required as jury panels for service at the courts during the ensuing year, they shall by resolution fix the total number of grand and petit jurors for the High Court Division, and for the Inferior Courts, which shall be returned by the local municipalities, and the total number which shall be selected by the district selectors from territory without municipal organization.

(5) The district selectors shall then proceed to select, from among the male persons of the full age of twenty-one years resident in territory without municipal organization, a list of persons to serve as grand and petit jurors respectively with those to be selected from the local municipalities.

Selection by district selectors.

(6) No person shall be selected to serve as a juror from territory without municipal organization who is exempted or disqualified under the provisions of this Act.

Persons exempt not to be selected.

(7) No property qualification shall be required in the case of any person selected from territory without municipal organization.

Property qualification, when not required.

(8) In making up any list of jurors from territory without municipal organization, the district selectors may have recourse to the last voters' list prepared and certified for such territory and to any assessment or collector's roll prepared for school purposes, and may proceed upon any information furnished by such list or roll or possessed or acquired by them in any other manner, but the persons selected shall be such as from the integrity of their character, the soundness of their judgment and the extent of their information are, in the opinion of the district selectors, the most discreet and competent for the performance of the duties of jurors.

Use of Voters' list, etc.

(9) The Clerk of the Peace instead of bringing into court and delivering the jurors' books as provided by section 32 shall on or before the 15th day of December in each year deliver them to the judge at his chambers and shall take the prescribed oath before him. 9 Edw. VII. c. 34, s. 44.

Clerk of Peace to deliver Jurors' books to Judge in Chambers.

JURY PROCESS.

45.—(1) The judges of the High Court Division, or one or more of them for the holding of any sittings of the High Court Division, and the Judge of the County Court, for the holding of any sittings of the County Court or of the Court of General Sessions of the Peace may respectively issue precepts, Form 1, Schedule D, to the sheriff for the return of a proper number of grand jurors for such sittings, and of such number of petit jurors as the county selectors shall have determined as the number to be drafted and returned or such greater or less number as in their or his opinion is required.

Judges to issue precepts to the Sheriffs.

(2) The precepts for the return of grand jurors shall command the return, and the panel shall consist of thirteen grand jurors. 9 Edw. VII. c. 34, s. 45.

Number of Grand Jurors.

46.—(1) The Judge of the County Court, if after the issue of the precept it appears to him expedient, may at any time prior to the day appointed for the sittings of the High Court Division, by order under his hand and seal, and the Judge assigned to hold the sittings or the presiding Judge may, at any time before or during the sittings of such court,

Judge of County Court may order additional petit jurors for High Court Sittings.

by order under his hand and seal, direct the sheriff to return an additional number of petit jurors.

Additional
petit jurors for
inferior
courts.

(2) The Judge of the County Court, after the issue of the precept, at any time prior to or during the sittings of the County Court or Court of General Sessions of the Peace, by order under his hand and seal may direct the sheriff to return an additional number of petit jurors.

Duty of sheriff
as to drafting
additional
number of
jurors.

(3) The sheriff, upon the receipt of any such order, shall forthwith draft such additional number of jurors in the manner provided by this Act, and shall add their names to the panel, and shall forthwith thereafter summon them. 9 Edw. VII. c. 34, s. 46.

Proper officer
to procure
precepts for
return of
panels, and
transmit to
proper officers.

47. The proper officer in the Central Office at Osgoode Hall, Toronto, shall procure the precepts for the return of panels of grand and petit jurors required for the sittings of the High Court Division, and transmit the same to the sheriffs as soon as conveniently may be after the day has been appointed for the sittings for which the jurors are required. 9 Edw. VII. c. 34, s. 47.

When
same panels
for general
sessions and
county courts.

48. Where the same day is appointed for holding the Court of General Sessions of the Peace and the sittings of the County Court, the sheriff may return the same panel to the precepts for the panels to petit jurors. 9 Edw. VII. c. 34, s. 48.

When two or
more sets of
petit jurors.

49.—(1) Where a Judge of the High Court Division deems it necessary to have two or more sets of petit jurors to serve at any sittings of the High Court Division he may direct the sheriff to return such number of petit jurors, not exceeding in the County of York three hundred and eighty-four, in the County of Wentworth two hundred and sixteen, and in any other county one hundred and forty-four, as such Judge may think fit, and such Judge shall fix and direct the number of sets and the day for which each set shall be summoned.

Sheriff to
divide jurors
into sets.

(2) The sheriff shall divide such jurors into as many sets as may be directed, and shall in the summons to every juror specify at what time his attendance will be required.

Each set to be
deemed a
separate panel.

(3) Each set shall for all purposes be deemed a separate panel. 9 Edw. VII. c. 34, s. 49.

The High
Court may
issue writs
and precepts
as heretofore.

50. Subject to the provisions of this Act the High Court Division and the judges thereof shall have the same power and authority as heretofore in issuing any precept, or in making any award or order, orally or otherwise, for the return of a jury for the trial of any issue before the court, or for the amending or enlarging the panel of jurors returned for the trial of any such issue; and the return to any precept,

award or order shall be made in the manner heretofore used and accustomed, and the jurors shall, as heretofore, be returned from the body of the county, and shall be qualified according to this Act. 9 Edw. VII. c. 34, s. 50.

51. The provisions of this Act, respecting the issue of precepts for the return of a panel of grand jurors for the sittings of the High Court Division, as well as for the execution and return of the precepts, with all things touching the same, shall in all particulars be observed and followed with respect to the sittings of the Court of General Sessions of the Peace. 9 Edw. VII. c. 34, s. 51.

The directions for precepts, etc., at sittings of High Court to apply also to the general sessions.

52. The provisions of this Act respecting the issue of precepts for the return of a general panel of petit jurors for the sittings of the High Court Division, as well as for the execution and return of the precepts with all things touching the same, shall be observed and followed in all particulars with respect to the sittings of the several county courts, except that the number of petit jurors to be summoned in the County of York shall not exceed two hundred and eighty-eight. 9 Edw. VII. c. 34, s. 52.

And county courts.

53. Precepts for the County of York shall be directed to the sheriff to whom is assigned the court for which the jurors are to be summoned, and the sheriff, whether of the City of Toronto or of the County of York, to whom any precept to summon jurors for the sittings of any court at the City of Toronto is addressed shall summon the jurors necessary for such court, and make all proclamations, and give all notices, not only from and in his own bailiwick, but also from and in the bailiwick of the other of such sheriffs, and for these purposes each of them shall have equal power and authority in either bailiwick. 9 Edw. VII. c. 34, s. 53.

Summoning of jurors for City of Toronto and County of York.

DRAFTING PANELS FROM JURY LISTS.

54. Every sheriff to whom a precept for the return of jurors is directed shall, to such precept, return a panel of the names of the jurors contained in the proper jury list, whose names shall be drafted from such list in the manner herein-after mentioned. 9 Edw. VII. c. 34, s. 54.

How sheriffs to draft panels of jurors.

55. Where there is no jurors' book for the year, or certified copy thereof, in existence, the sheriff may return a panel of jurors drafted from the proper jury list in the jurors' book of the nearest preceding year for which there is a jurors' book, or certified copy thereof, in existence. 9 Edw. VII. c. 34, s. 55.

If no jurors' book for the year.

56. Where there are no jurors, or not a sufficient number upon the jury list, the sheriff may return to the precept a panel of jurors drafted, or the residue of whom have been

If not a sufficient number on the lists.

drafted from the proper jury list in the jurors' book of the nearest preceding year for which there is a jurors' book, or certified copy thereof, in existence. 9 Edw. VII. c. 34, s. 56.

What notice
Sheriff shall
give.

57. Upon receipt of the precept the sheriff shall post up in his office, and also on the door of the Court House of the county, or if there be no Court House, then in some other public place, written notice of the day and hour at which he will attend at the office of the Clerk of the Peace to draft such panel of jurors, and at such time and place he shall proceed to draft the panel by ballot from the jury list in the presence of the Clerk of the Peace and any two justices of the peace of the county, who, upon reasonable notice from the sheriff, are hereby required to attend, and for such services the said justices shall each receive the sum of \$1 for each of such panels drafted, which sums shall be paid by the Treasurer of the county, on receipt of the sheriff's certificate that such service has been performed. 9 Edw. VII. c. 34, s. 57.

Amount to be
paid Justices
of the Peace
for each panel.

Notice to be
eight days if
time admits.

58.—(1) If the sheriff has sufficient time he shall post up such notice at least eight days before the drafting of the panel, and if there be not sufficient time he shall post up such notice forthwith upon receipt of the precept.

The drafting
if not com-
pleted may be
subsequently.

(2) If the drafting or completing of the panel, at the time appointed, is prevented by unavoidable accident the same may be subsequently done or completed upon similar notices being first given. 9 Edw. VII. c. 34, s. 58.

How sheriff
to prepare a
panel.

59.—(1) Before proceeding to draft a panel of jurors from a jury list the sheriff shall prepare a proper title or heading for the panel of jurors to be returned, to which he shall fix an appropriate number according as such panel by the jurors' book appears to be the first, second, third or subsequent panel drafted from such jury list, and the title or heading shall set forth in words at length the number of jurors to be returned.

Ballots for
drafting
panel.

(2) The Sheriff shall then append to such title or heading a list of numbers from "1" forward to the number required, and shall prepare a set of ballot papers of uniform and convenient size, such set containing the same number of ballot papers as there are numbers on the jury list, allowing one number to each ballot paper, which number shall be printed or written on the same, and he shall then proceed to draft the panel of jurors. 9 Edw. VII. c. 34, s. 59.

How panel of
jurors to be
drafted.

60. The manner of drafting the panel shall be as follows:—

- (a) The sheriff shall place the ballot papers in a box or urn, and shall cause it to be shaken so as sufficiently to mix the ballot papers, and he shall then openly draw from the box or urn indiscrimin-

ately one of the ballot papers, and declare openly the number on such ballot paper, whereupon the Clerk of the Peace, or one of the Justices of the Peace shall immediately declare aloud the name of the person opposite whose name the corresponding number is placed on the jury list;

- (b) If such person is exempt from being drafted or from serving upon such panel, under section 4, or if, upon the face of such jury list, it appears that the person whose number has been so drafted has previously been drafted to serve on a panel drafted from such jury list in obedience to a precept for the return of a general panel for any sittings of the High Court Division, the Court of General Sessions of the Peace, or County Court, and that such person has actually attended and served upon such panel, and a sufficient number of names to complete the panel then in course of being drafted, remains on the jury list without taking any of those who have been so previously drafted, the sheriff shall publicly announce the fact of such exemption or previous service, and that the name of the person so drafted is, for that reason, not inserted in the panel;
- (c) If no such cause appears for omitting the name of such person from the panel, the name and addition of the person whose name has been so drafted shall be thereupon written down, and shall be marked by the sheriff on such jury list, with a reference to the number which will belong to such panel in the jurors' book;
- (d) The sheriff shall then proceed in like manner to draft and dispose of other numbers from the box or urn, until the necessary number for the panel has been completed;
- (e) The names of the persons so drafted, arranged alphabetically, with their places of residence and additions shall then be transcribed by the sheriff upon another sheet of paper, with a reference to the number of each name on the jury list, and each name shall be thereupon marked by him or by his deputy upon the jury list book, with a reference to the number which belongs to such name in the panel in the jurors' book.
- (f) The panel so alphabetically arranged and numbered, with a short statement of the precept in obedience to which it has been drafted, the date and place of such drafting, and the names of the sheriff, or his deputy, and of the Clerk of the Peace and Justices of the Peace, present at such drafting, or of at

least two of them, shall then be entered in the said jurors' book, and attested by the signatures of such sheriff, or his deputy, and of the Clerk of the Peace and the justices, or at least two of them. 9 Edw. VII. c. 34, s. 60.

Jury panel to be kept by sheriff under lock and key.

61.—(1) The names of the jury drafted for any panel shall be kept by the sheriff under lock and key, and, except in so far as may be necessary in order to prepare the lists of the panel, and serve the jury summons, and except as provided in subsection 2, shall not be disclosed by the sheriff, his deputy, officer, clerk or other person until ten days before the sittings of the court for which the list has been drafted.

Leave to examine panel.

(2) A party to a cause may obtain from the sheriff leave to examine the panel upon filing with the sheriff an affidavit, made by himself or by his solicitor, stating that an examination of the panel is necessary to determine whether a special jury shall be struck in such cause and that the examination is not desired and will not be used for any other purpose, and upon also filing with the sheriff the consent of the Judge of the County Court obtained on such material as he may deem sufficient. 9 Edw. VII. c. 34, s. 61.

Copy of the panel to be transmitted to the proper officer.

62.—(1) The sheriff shall, upon his return to the precept, annex thereto a panel containing the names, places of abode and additions of the persons so drafted, and shall transmit one copy thereof to the Clerk of the Peace, and another to the Central Office at Osgoode Hall, Toronto, or to the Deputy Clerk of the Crown, or Local Registrar, or to the Clerk of the County Court, as the case may be.

Copies, jurors' books, etc., to be open to inspection.

(2) The jurors' book, and each of such copies, upon the filing with the officer who has the custody thereof of an affidavit similar to that mentioned in subsection 2 of section 61, shall at all reasonable times be open to inspection by litigants or their solicitors without fee or reward. 9 Edw. VII. c. 34, s. 62.

SUMMONING JURORS.

Jurors to be summoned twelve days before attendance required.

63.—(1) The sheriff shall summon every person drafted to serve on grand juries or on petit juries, not being special juries, twelve days at least before the day on which the juror is to attend, by delivering to him, or in case of his absence from his usual place of abode, by leaving with some grown-up person there residing a notice in writing, Form 2, Schedule D, under the hand of the sheriff; but when the sheriff is directed to draft and summon additional jurors under the provisions of this Act, such twelve days' service shall not be necessary.

When actions to be entered for trial.

(2) Notwithstanding anything contained in any statute or rule of court actions to be tried by a jury, whether in the High Court Division or County Court, shall be entered for

trial not later than six clear days before the first day of the sittings.

(3) Where there is no business requiring the attendance of a jury at any sittings of the High Court Division, or of any County Court for the trial of actions with a jury the Deputy Clerk of the Crown, or the Local Registrar or the Clerk of the County Court, as the case may be, at least five clear days before the day appointed for such sittings, shall give notice thereof in writing, Form 3, Schedule D, to the sheriff, and that the attendance of jurymen is not required. Countermanding jury summonses where no business for jury.

(4) A similar notice shall be given to the sheriff by the Clerk of the Peace in the case of a sittings of the High Court Division for the trial of criminal prosecutions, or in case of the sittings of the Court of General Sessions of the Peace in any county, when it appears that the attendance of jurymen at such sittings is not required. For criminal prosecutions or general sessions.

(5) Subject to the provisions of subsection 8, the sheriff, upon receipt of such notice or notices, shall forthwith by registered letter or otherwise, as he may deem expedient, notify, Form 4, Schedule D, each person summoned to serve as a jurymen that his attendance at such sittings is not required, and in case any person so summoned shall attend, after receiving such notice, he shall not be entitled to any fees or mileage for attendance. Notice to be given to juror.

(6) Where, after the giving of such notice, a jurymen so summoned attends such sittings and the sheriff is satisfied that the notice was not received prior to such attendance and that the jurymen attended in good faith, believing such attendance to be necessary, the sheriff shall allow such jurymen his mileage and fees. Where juror attends owing to non-receipt of notice.

(7) For sending every notice required by subsection 5 there shall be paid to the sheriff in the same manner and out of the same funds as the fees for the summoning of jurors the sum of 25 cents, and necessary disbursements paid by him for each jurymen so notified. Fees of sheriff for sending notices.

(8) In the case of a sittings of the High Court Division for the trial of criminal matters and proceedings, or in the case of a sittings of the Court of General Sessions of the Peace, the sheriff shall not give the notice mentioned in subsection 5 unless he is satisfied that there is no prisoner in the common gaol awaiting trial at such sittings. Sheriff must ascertain that there are no prisoners in custody.

(9) Subsections 2 to 8, inclusive, shall not apply to any county in which is situate a city having a population of 20,000 or over. 9 Edw. VII. c. 34, s. 63. Exception where county contains a city of 20,000.

64. The sheriff shall summon every person drafted to serve on a special jury, in the like manner, three days at the least before the day on which the special juror is to attend. 9 Edw. VII. c. 34, s. 64. Special jurors to be summoned, three days before attendance required.

Proper officer to summon jurors whenever required.

65. Notwithstanding anything in this Act, the proper officer shall summon, in the manner heretofore used and accustomed, every person required to serve upon any inquest or enquiry before a coroner, or before any commissioners appointed under the Great Seal, or under the seal of the Supreme Court, or to serve as a talesman upon any jury. 9 Edw. VII. c. 34, s. 65.

Sheriff indemnified for returning unqualified persons, if in the rolls of jurors.

66. Every sheriff is hereby indemnified for empanelling and returning as a grand or petit juror any person named in or taken from the grand or petit jurors' rolls for the year in which he has been summoned, although such person may not have been qualified or liable to serve as a juror for such year. 9 Edw. VII. c. 34, s. 66.

EMPANELLING THE GRAND JURY.

How grand jurors to be empanelled if a sufficient number do not appear.

67. Where there do not appear as many as thirteen of the grand jurors summoned upon a panel returned upon any precept to any court of criminal jurisdiction, the Court, upon the request of the Attorney-General, or of counsel for the Crown, or of the Crown Attorney, shall or may *proprio motu* command the sheriff to name and appoint so many persons then present or who can be found, whether on the panel of petit jurors or not, as will make up a grand inquest of thirteen, and the sheriff shall return such persons to serve on such grand inquest, and shall add their names to the panel returned upon such precept; and the court shall proceed with those grand jurors who were before empanelled, together with the talesmen so newly added, as if all such jurors had been originally returned upon such precept. 9 Edw. VII. c. 34, s. 67.

DRAWING JURY AT TRIAL.

Empanelling petit jury at the trial.

68. The name of every person summoned and empanelled as a petit juror upon the general precept for any sittings of the High Court Division, the Court of General Sessions of the Peace, or County Court, with his place of abode and addition, shall be written by the sheriff distinctly on a card or paper, as nearly as may be of the form and size following, viz.:

DAVID BOOTH,

of Lot No. 11, in the 7th Con. of Albion,

MERCHANT.

and the names so written shall, under the direction of the Sheriff, be put together in a box or urn to be provided by him for that purpose, and he shall deliver the same to the Clerk of the Court. 9 Edw. VII. c. 34, s. 68.

69.—(1) Where an issue is brought on to be tried, or damages are to be assessed by a jury, the Clerk shall, in open court, cause the box or urn to be shaken so as sufficiently to mix the names, and shall then draw out twelve of the cards or papers, one after another, causing the box or urn to be shaken after the drawing of each name, and if any juror whose name is so drawn does not appear or is challenged and set aside, then such further number until twelve jurors are drawn, who do appear, and who, after all just causes of challenge allowed, remain as fair and indifferent, and the first twelve jurors so drawn, appearing and approved as indifferent, their names being noted in the minute book of the Clerk of the Court, shall be sworn, and shall be the jury to try the issue, or to assess the damages.

How the clerk is to proceed to draw names.

(2) The cards or papers containing the names of persons so drawn and sworn shall be kept apart until the jury have given in their verdict, and the same has been recorded, or until the jury have been by consent of the parties, or by leave of the court, discharged, and shall then be returned to the box or urn, there to be kept with the other cards or papers remaining therein. 9 Edw. VII. c. 34, s. 69.

Names drawn to be kept apart, etc.

70. If an issue is brought on to be tried, or damages are to be assessed, at any of such sittings before the jury in any other cause have brought in their verdict, or been discharged, the court may order twelve of the residue of the cards or papers to be drawn for the trial of the issue so brought on to be tried, or for the assessment of damages, as the case may be. 9 Edw. VII. c. 34, s. 70.

If another jury is required before the last drawn have brought in their verdict.

71. Notwithstanding the two last preceding sections, where no objection is made on the part of the King, or any other party, the court may try any issue or assess damages with the jury previously drawn to try any other issue, or to assess damages, without the cards or papers containing their names being returned to the box or urn and redrawn, or may order that any of the jurors whom both parties consent to withdraw, or who may be justly challenged or excused by the court, shall retire and may cause another name or other names to be drawn from the box or urn, and shall try the issue or assess the damages with the residue of the original jury, and the new jurors who appear and are approved as indifferent. 9 Edw. VII. c. 34, s. 71.

Several causes may be tried in succession by the same jury.

72.—(1) Where a full jury does not appear at a sittings of the High Court Division, or at a sittings of a County Court or of the Court of General Sessions of the Peace, or

If a full jury do not appear a tales may be granted.

where, after the appearance of a full jury, by challenge of any of the parties, the jury is likely to remain untaken for default of jurors, the court may command the sheriff to name and appoint so many of such other able men of the county then present, or who can be found, as will make up a full jury, and the sheriff shall return such persons to serve on the jury.

Adding names of talesmen.

(2) Where a full jury does not appear the names of the persons so returned shall be added to the panel returned upon the precept. 9 Edw. VII. c. 34, s. 72.

ENTRY OF SERVICE OF JURORS.

The Sheriff to note on lists names of jurors who do not serve.

73. Immediately after the sittings of the High Court Division and of the Court of General Sessions of the Peace, and of the County Court, the sheriff shall note on the jury list from which the panel of grand jurors, if any, returned to such sittings was drafted, and on the jury list from which the panel of petit jurors was drafted, opposite the names of the jurors, the non-attendance or default of every juror who has not attended until discharged by the Court. 9 Edw. VII. c. 34, s. 73.

CHALLENGES.

The want of qualification a good ground of challenge.

Exception.

74. If any person not duly qualified is drawn as a juror for the trial of any issue in any matter or proceeding, the want of such qualification shall be a good cause of challenge; but the want of a sufficient property qualification shall not be a good cause of challenge, nor a cause for discharging the juror upon his own application. 9 Edw. VII. c. 34, s. 74.

In civil cases each party may challenge four peremptorily.

75. In any cause, the plaintiff or plaintiffs, on one side, and the defendant or defendants, on the other, may challenge peremptorily any four of the jurors drawn to serve on the trial, and such right of challenge shall extend to the King, when a party. 9 Edw. VII. c. 34, s. 75.

Not to apply to special jurors.

76. The two next preceding sections shall not apply to special jurors. 9 Edw. VII. c. 34, s. 76.

Ratepayers officers, etc., of corporation may be challenged as jurors.

77. In a matter or proceeding to which a municipal corporation other than a county is a party, every ratepayer, and every officer, or servant of the corporation shall, for that reason, be liable to challenge as a juror. 9 Edw. VII. c. 34, s. 77.

SPECIAL JURIES.

Either party may strike a special jury.

78.—(1) In any case whatever whether civil or criminal triable by a jury excepting only indictments for treason or felony, His Majesty or any prosecutor, relator or plaintiff and any defendant may have the issues joined tried by a special jury upon procuring such special jury to be struck

and summoned for the day on which the trial of such case is to be had, and the jury so struck shall be the jury returned for the trial of the issues.

(2) The party desiring the special jury shall give notice in writing thereof to the opposite party, after the close of the pleadings and at least eight days before the first day of the sittings at which the case is to be tried. Notice to opposite party.

(3) Upon the application of any party the court or a judge may at any time make an order for a special jury upon such terms as to costs and otherwise as may be deemed just. Order for special jury.

(4) Where notice has been given to try by special jury, either party may, at least six days before the first day of the sittings at which the case is to be tried, give notice to the sheriff that the case is to be tried by a special jury, and if no such notice is given no special jury need be struck or summoned, and the case may be tried by a common jury, unless otherwise ordered by the court or a judge. Notice to sheriff.

(5) The sheriff shall thereupon, in writing, appoint some convenient day and hour for striking the special jury, sufficiently distant to enable the party requiring the special jury to give notice to the opposite party, and the party requiring the same shall serve a copy of such appointment upon the opposite party or his solicitor four clear days before the day so appointed, and in default thereof the sheriff shall not proceed to strike the special jury. Appointment for striking Special Jury.

(6) If a party does not attend, in person or by solicitor, at the striking of the special jury, the sheriff, upon proof of service of the appointment, and after waiting half an hour for the absent party, shall, if requested by the other party, or his solicitor, proceed to strike the special jury, and in case of the continued absence of such first mentioned party, the sheriff shall, on his behalf, strike off the list the twelve names which such party is entitled to strike off the list as hereinafter provided. 9 Edw. VII. c. 34, s. 78. How to proceed if either party fails to attend.

79. A special jury shall, except as hereinafter provided, consist of persons whose names appear on the roll of grand jurors for the High Court Division or on the roll of grand jurors for the Inferior Courts for the year in which the notice to the sheriff is given. 9 Edw. VII. c. 34, s. 79. Qualifications of special juries.

80. A special jury shall be struck in the following manner: How a special jury is to be struck.

(a) The sheriff shall provide as many ballot papers of uniform and convenient size as there are names on the two grand jurors' rolls from which the special jury is to be struck, and the whole of the numbers on such grand jurors' rolls shall be printed or written upon such ballot papers respectively. Ballots to be prepared.

tively, allowing one number to each ballot paper, and distinguishing each number by the letters H. C. D. or I. C., according as it belongs to the roll of grand jurors for the High Court Division, or to the roll of grand jurors for the Inferior Courts;

Drawing
special jurors.

- (b) At the office of the Clerk of the Peace, at the time appointed, in the presence of the parties or their solicitors or such of them as attend, the sheriff shall put all the ballot papers in a box or urn, and after having caused it to be shaken so as to sufficiently mix the ballot papers, he shall openly draw from the box or urn forty of the numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the grand jurors' roll to which the ballot paper belongs, and read aloud the name to which the number is appended in the roll;

Objection to
jurors drawn.

- (c) If, at the time of reading a name, either party, or his solicitor, objects that the person whose name has been drawn is disqualified or incapacitated from serving on the jury, and proves the same to the satisfaction of the sheriff, the name shall be set aside, and the sheriff shall instead thereof openly draw another ballot paper, and shall in like manner refer to the corresponding number in the grand jurors' roll to which the ballot paper belongs, and read aloud the name to which the number is appended in the roll, and such name may be in like manner set aside, and other names may be drawn according to the mode of proceeding hereinbefore prescribed for the purpose of supplying names in the places of those set aside until the whole number of forty names not liable to be set aside is completed;

If forty names
cannot be
obtained.

- (d) Where forty names cannot be obtained from the grand jurors' rolls, the sheriff shall, in like manner, from the grand jurors' rolls in the jurors' book of the nearest year for which there is a jurors' book or a certified copy thereof in the office of the Clerk of the Peace, select by ballot, in addition to those already taken from the first mentioned grand jurors' rolls, the number of names required to make up the full number of forty names;

Sheriff to make
lists of names
chosen on
ballot.

- (e) The sheriff shall thereupon make a list of the forty names, together with the places of abode and additions of the persons selected, from which list, after a reasonable time allowed in the discretion of the sheriff for inquiry and consideration respecting the same, each party, or his solicitor, shall strike off twelve names, the names being so

struck off by the parties, one by one alternately, the party who has given the notice to the Sheriff commencing;

- (f) The sheriff shall summon to appear on the day appointed for the trial of the case and shall return upon the notice served upon him for the special jury the sixteen persons whose names remain upon the list, and shall file such notice and return with the clerk of the court before which the trial is to take place;
- (g) From the sixteen persons, or so many of them as appear in obedience to the summons, a special jury for the trial of the case shall be drawn in the manner prescribed by section 69 for the drawing of petit jurors. 9 Edw. VII. c. 34, s. 80.

81. Immediately after the striking of the special jury the sheriff shall certify the sum required to pay for the attendance of the jurors for three days, and the allowance for mileage and sheriff's fees; and the party who has given the notice requiring the special jury, or if he has made default in attending to strike the special jury, then the party who has requested the sheriff to proceed under subsection 6 of section 78 shall forthwith deposit with the sheriff the sum so certified as sufficient to pay such expenses as aforesaid, but nothing herein contained shall limit the payment required to be made to the jurors to the sum so deposited. 9 Edw. VII. c. 34, s. 81.

82. In the event of a new trial being ordered after the verdict of a special jury, the notice to the sheriff mentioned in subsection 4 of section 78 shall set forth the names of the jurors who sat on the first trial, or if more trials than one have been previously had, the names of all the jurors who so sat upon any of such trials, and none of the jurors who sat upon a former trial shall be returned or sit as jurors upon any subsequent trial of the same case. 9 Edw. VII. c. 34, s. 82.

83. Where a special jury has been struck the talesmen, if any be required, shall be selected from the jurors empanelled upon the petit jury panel to serve at the same court if a sufficient number can be found, and the King, and every party shall have and may exercise their respective challenges to the talesmen so added. 9 Edw. VII. c. 34, s. 83.

COSTS OF SPECIAL JURIES.

84. The party who gives notice to the sheriff for a special jury, or the party who upon his default has requested the sheriff to proceed under subsection 6 of section 78 shall pay

The sixteen jurors to be summoned.

How special juries formed.

Party requiring special jury to deposit expenses of jury with Sheriff.

Same jurymen not to be returned or sit on new trial.

In special jury cases talesmen to be taken from the general panel.

The party who gives notice for the jury to pay fees of striking, etc.

the fees for striking such special jury, the fees of the jurors and all the expenses occasioned by the trial by the special jury, and shall not have any further or other allowance for the same upon taxation of costs than if the case had been tried by a common jury, unless the trial Judge certifies in open court, immediately after the verdict, or afterwards upon notice at chambers, that the case was proper to be tried by a special jury. 9 Edw. VII. c. 34, s. 84.

Costs where special jury summoned but cause not tried.

85. If a case in which a special jury has been summoned be not tried, the party who required the special jury shall not have any further or other allowance for the same, upon taxation of costs, than if the jury had not been summoned, unless a judge, upon notice to the opposite party, certifies that the case was proper to be tried by a special jury. 9 Edw. VII. c. 34, s. 85.

VIEW BY JURORS.

View by jurors.

86.—(1) Where in an action, whether the same is to be tried by a special or by a common jury, it appears to the presiding judge that in order to the better understanding of the evidence the jurors who are to try the issues ought to have a view of the place or of the real or personal property in question, whether the same be within or without the county in which the trial is to take place, he may at any time after the jurors have been sworn and before they give their verdict order that the jurors shall have such view.

Terms of order.

(2) The order may be made on such terms as to costs and the adjournment of the trial and otherwise as may be deemed just, and shall contain directions to the sheriff as to the manner in which and the persons by whom the place or the property in question shall be shewn to such jurors and any other directions which under the circumstances the judge may think proper. 9 Edw. VII. c. 34, s. 86.

MISCELLANEOUS PROVISIONS.

Omissions to observe the directions of this Act, not to vitiate the verdict.

87. The omission to observe any of the directions in this Act as respects the qualification, selection, balloting and distribution of jurors, the preparation of the jurors' book, the selecting of jury lists from the jurors' rolls, the drafting of panels from the jury lists, or the striking of special juries shall not be a ground of impeaching the verdict or judgment in any action. 9 Edw. VII. c. 34, s. 87.

No person to be summoned whose name is not on the roll of jurors.

88.—(1) No person shall be liable to be summoned or empanelled to serve as a juror upon any inquest or inquiry to be taken or made by or before any commissioners appointed under the Great Seal, or the seal of any court having general jurisdiction throughout Ontario or throughout any county,

unless the name of such person appears upon the jurors' rolls for the year in which such person is called upon to serve on such inquest or inquiry.

(2) This section shall not extend to an inquest to be taken by or before a coroner, by virtue of his office, or to an inquest or inquiry to be taken or made by or before a sheriff, coroner, or high bailiff. 9 Edw. VII. c. 34, s. 88.

89. The several writs of *venire facias juratores* and *dis-
tringas juratores* and *habeas corpora juratorum* and the writ
de ventre inspiciendo shall no longer be necessary or be used. 9 Edw. VII. c. 34, s. 89.

Exception;
coroners'
juries, etc.

Jury writs
abolished.

Imp. C.L.P.
Act 1852,
s. 104.

FEEES OF JURORS.

90.—(1) Every grand juror actually attending a sittings of the High Court Division or of the Court of General Sessions of the Peace, and every petit juror actually attending a sittings of the High Court Division or of the Court of General Sessions of the Peace, or a County Court, shall be entitled to receive the sum of two dollars and fifty cents per day for every day on which he is necessarily absent from his place of residence for the purpose of attending such Court, and the sum of thirteen cents for every mile he necessarily travels from his place of residence to the court. 9 Edw. VII. c. 34, s. 90 (1); 2 Geo. V. c. 17, s. 15 (1).

Jurors' fees
and mileage.

(2) The distance travelled shall be ascertained by the declaration of the sheriff's bailiff who summoned the juror or by the declaration of the juror himself; but every juror who makes a false declaration respecting such distance shall forfeit his right to receive any payment for travelling to or attending such court as a juror.

How ascer-
tained.

(3) Where a grand or petit juror who does not reside in the county town actually attends the sittings of the court as such juror on Saturday and on the Monday following he shall be entitled to be paid for the intervening Sunday.

Jurors
attending on
Saturdays and
Mondays to
be paid for
Sunday.

(4) Where petit jurors who do not reside in the county town are in attendance at the court and are informed by the presiding judge that their attendance will not be required for two days or more, or where a grand jury adjourns for a period of two days or more, the jurors' allowance shall be paid for two days of the period during which they were absent.

Absence of
jurors not
residents of
county town
by permission
of judge.

(5) In lieu of such pay for Sundays or other days in the next two preceding subsections mentioned, the juror may have mileage for going to and returning from his place of residence if there is a by-law of the County Council authorizing such mileage.

Mileage in
lieu of pay.

(6) In a county the County Council, and in a Provisional Judicial District the Lieutenant-Governor in Council, may increase the per diem allowance to Jurors to any sum not exceeding \$3. 9 Edw. VII. c. 34, s. 90 (2-6).

County Council
and Lieuten-
ant-Governor
may increase
pay.

Sheriff to
make a pay
list for petit
jurors.

91.—(1) The sheriff shall make a pay list for the petit jurors, Schedule C, and shall attend or cause some officer to attend at the opening of the court, on every day on which the court sits for the trial of actions by jury, and upon the petit jurors being called, shall check and mark the word “present” or “absent,” as the case may be, in the proper column of the list opposite the name of every juror, and on the last day of the sittings of the court shall certify and return the pay list to the Treasurer of the county, and the Treasurer shall forthwith pay to every petit juror the sum to which he appears by the list to be entitled.

Treasurer to
pay the jurors.

County Court
and General
Sessions to be
deemed one
court.

(2) The County Court and the Court of General Sessions of the Peace shall for the purposes of this section be deemed to be one court, and the duty of calling the jurors at the opening of the court shall be performed by the Clerk of whichever court is first opened. 9 Edw. VII. c. 34, s. 91.

Allowance to
Sheriffs.

92.—(1) The sheriff shall be entitled to receive from the Treasurer of the county such sum for the pay list and such sum per diem for checking and for certifying and returning the same to the Treasurer as in the case of a county the County Council by by-law determines, and in the case of a Provisional Judicial District as the Lieutenant-Governor in Council determines.

Sheriff's fee
for checking
panel and
returning list.

(2) Where such sums have not been fixed under subsection 1 the sheriff shall be entitled to receive from the Treasurer of the county or district \$1 per day for checking the jury panel and \$1 for certifying and returning the list to the Treasurer. 9 Edw. VII. c. 34, s. 92.

List of Jurors
to be called.

93. The Marshal or the Clerk of the Court, or the Clerk of the Peace, as the case may be, shall, at the opening of the court, and before any other business is proceeded with, call the names of the petit jurors, so that the sheriff or his officer may check off those who are present or absent. 9 Edw. VII. c. 34, s. 93.

Jurors not
attending not
to be paid.

94. A petit juror not appearing when called shall not be entitled to pay for the day on which he makes default. 9 Edw. VII. c. 34, s. 94.

Allowances to
special jurors.

95. Special jurors shall receive the same allowances and mileage as petit jurors are entitled to under section 90. 9 Edw. VII. c. 34, s. 95.

FUND FOR PAYMENT OF JURORS.

Fees on Entry of Records.

Sums to be
paid with re-
cord when
entered for
trial in jury
cases.

96.—(1) With every record entered for trial of issues or assessment of damages by a jury in the High Court Division there shall be paid to the Clerk of Assize, the Deputy Clerk of the Crown or the Local Registrar of the Supreme Court, as

the case may be, the sum of \$3, and in the County Court to the Clerk of the County Court the sum of \$1.50; and the record shall not be entered unless such sum is first paid.

Record not to be entered unless sum is paid.

(2) Such sum in the case of a county shall be forthwith paid over to the Treasurer of the county, and shall form part of the fund for the payment of petit jurors, and in the case of a district shall be forthwith paid over to the Treasurer of the district and shall form part of the Consolidated Revenue Fund. 9 Edw. VII. c. 34, s. 96.

How to be dealt with.

Fines and Penalties.

97. All fines imposed upon jurors for non-attendance shall in the case of a county be paid to the Treasurer of the county, and shall form part of the fund for the payment of petit jurors, and in the case of a district shall be paid to the Treasurer of the district and shall form part of the Consolidated Revenue Fund. 9 Edw. VII. c. 34, s. 97.

Certain fines to go towards payment of jurors.

County Councils to Supply Deficiency.

98. If the sums appropriated by this Act are not sufficient to pay the petit jurors, the County Council shall raise and appropriate such sum of money as will be sufficient to pay them. 9 Edw. VII. c. 34, s. 98.

County Councils to provide funds for paying jurors.

FEES TO OFFICERS UNDER THIS ACT.

1.—Selectors.

99. The Local Selectors for every selection, and distribution of jurors, and the report thereof, shall be entitled to such sum as is authorized by the council of the municipality: and, upon receipt of a certificate from the Clerk of the Peace that the report has been returned to him within the time fixed by this Act, such sum shall be paid to them by the Treasurer of the municipality. 9 Edw. VII. c. 34, s. 99.

Fees to the local selectors.

100.—(1) The county selectors shall be entitled to the sum of \$4 each for each day's attendance in the performance of their duties under this Act, but when the number of grand and petit jurors to be selected does not exceed five hundred no selector shall be entitled to be paid for a greater number of days than four.

Fees of county selectors

(2) When the number to be selected exceeds five hundred each selector actually attending shall be entitled to be paid as for one additional day for every two hundred additional names selected, and no more.

Additional fees.

(3) Upon receipt of a certificate from the Clerk of the Peace that the duties required of the county selectors have been duly performed by them, such sum shall be paid by the

Payment.

Treasurer of the county to every such selector, and the Clerk of the Peace shall be paid for his attendance at the meeting of the county selectors the same fees as a county selector. 9 Edw. VII. c. 34, s. 100.

2.—*Clerks of the Peace.*

Fees to clerks
of the peace.

101. The Clerk of the Peace shall be entitled to the following fees:

1. For receiving, examining and filing the reports of the Local Selectors for each municipality, and causing any deficiency found therein to be supplied \$0 50
2. For giving certificates to selectors of Jurors, of duties having been performed; but only one certificate for all the selectors for each municipality shall be given 0 50
3. For preparing and superintending the making up of each Jurors' Book (besides actual disbursements for stationer's charges) 3 00
4. For making up Jurors' Books, entering all the names and numbers, and all other matters required to be entered therein, per one hundred names 2 00
5. For each copy of the Jurors' Book required by this Act, per one hundred names 2 00
6. For each certificate required to be entered in the Jurors' Book 1 00
7. For copy of Jury List required to be entered, per one hundred names 2 00
8. For each panel of Jurors drafted from the Jury List, per one hundred names on each Jury List 2 00
9. For entering each panel in the Jurors' Book, with the numbers corresponding to the Jury List 2 00
10. For making up aggregate return in detail of Jurors 5 00
11. For copy thereof, and transmitting same to Provincial Secretary when required 2 00
12. For each office copy of the same 2 00

9 Edw. VII. c. 34, s. 101.

3.—*To Sheriffs, etc.*

Fees to
sheriffs, etc.

102. The Sheriff, in addition to such fees as he may be entitled to from the parties to an action, shall be entitled to the following fees:

1. For each panel of Jurors, Grand or Petit, returned and summoned by him in obedience to any general precept \$4 00
2. For copies of such panel to be transmitted to the proper officers, each 1 00
3. For every summons served upon the Jurors on any panel. 0 25
4. For every mile which the Sheriff or his Deputy or Bailiffs necessarily and actually travelled from the County Town for the purpose of serving such summonses (such mileage to be allowed for going only, and not for returning) 0 13
5. Advertising the drafting of Jury panels 1 00
(Required by section 88)
6. Notices to Clerk of the Peace, and Justices, each 0 50
(Required by same section)
7. Attending to draft Jury panels 4 00
8. Writing names of Jurors on cards 2 00

9 Edw. VII. c. 34, s. 102.

MODE OF PAYMENT.

103. In the cases provided for by sections 100 and 101, where there are more than one hundred or more than an even number of hundreds of such names, if the broken number beyond the hundred or hundreds falls short of fifty names, the same shall not be reckoned, and if the broken number amounts to fifty names or upwards, the same shall be reckoned as a full hundred, but in all cases of there being altogether less than a single hundred, the same shall be reckoned as a full hundred. 9 Edw. VII. c. 34, s. 103.

If there are more than one hundred names.

104.—(1) Upon proof by affidavit of the services having been performed and upon the account being audited and an order of the Board of Audit being made for payment, the Treasurer of the county shall pay to such officers the amount of their fees.

How the said fees shall be paid.

(2) In the case of a sheriff's account there shall be annexed to the affidavit a detailed statement showing the number of miles actually and necessarily travelled in effecting service of the summons on each juror, so that at the end of the journey upon which the services were made the officer summoning the Jury shall be entitled to mileage only for the number of miles actually travelled. 9 Edw. VII. c. 34, s. 104.

Affidavit as to mileage.

PENALTIES.

105. If a person, having been duly summoned to attend on a Jury, does not attend in pursuance of the summons, or being there called does not answer to his name; or if a juror or talesman, after having been called, is present but does not appear, or after his appearance wilfully withdraws himself from the presence of the court, the court may impose such fine upon the juror or talesman as may be deemed proper. 9 Edw. VII. c. 34, s. 105.

Penalty on jurors for non attendance.

106.—(1) If a person having been duly summoned and returned to serve as a juror upon an inquest or inquiry before a sheriff or coroner, or before any of the commissioners mentioned in section 88, does not, after being openly called three times, appear and serve, the sheriff, coroner or commissioners may impose such fine, not exceeding \$20. upon the person so making default as may be deemed proper.

Penalty on jurors failing to attend upon inquests and inquiries, etc.

(2) The sheriff, coroner or commissioners shall make out and sign a certificate containing the name, the residence and addition of every person so making default, together with the amount of the fine imposed and the cause of the fine, and transmit the certificate to the Clerk of the Peace for the county in which the defaulter resides, on or before the first day of the sittings of the Court of General Sessions of the Peace next ensuing.

Sheriff to certify defaults and transmit copies.

Fines to be
estreated.

(3) The Clerk of the Peace shall enter the fine so certified on the roll on which fines and forfeitures imposed at the Court of General Sessions are entered, and the same shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects as if it had been a fine imposed at a sittings of the Court of General Sessions of the Peace. 9 Edw. VII. c. 34, s. 106.

Penalties on
sheriffs, etc.,
for default
to perform
duties assign-
ed to them.

107. If a sheriff wilfully empanels and returns to serve on a jury a person whose name has not been duly drawn upon the panel in the manner in this Act prescribed, or if a Clerk of Assize, Clerk of the Peace, or other officer wilfully records the appearance of any person so summoned and returned who has not really appeared, the court may, upon examination in a summary way, impose such fine upon the Sheriff, Clerk of Assize, Clerk of the Peace, or other officer as may be deemed proper. 9 Edw. VII. c. 34, s. 107.

On sheriffs,
etc., taking
money as a
bribe.

108. No sheriff or other officer or person shall, directly or indirectly, take or receive money or other reward or promise of money or reward, to excuse any person from serving or being summoned to serve as a juror; and no bailiff or other officer appointed by a sheriff to summon jurors shall summon or pretend to summon any person to serve as a juror other than those whose names are specified in a warrant or mandate signed by such sheriff and directed to such bailiff or other officer; and if a sheriff or other officer wilfully transgresses in any of such cases, the High Court Division, the Court of General Sessions of the Peace or County Court within whose jurisdiction the offence has been committed may impose upon the person so offending such fine as may be deemed proper. 9 Edw. VII. c. 34, s. 108.

On sheriffs,
etc., making
any unauthor-
ized alteration
in any jurors'
book, or ne-
glecting to
return the
same, etc.

109.—(a) If a sheriff or deputy sheriff makes, or causes to be made, any alteration in any of the rolls, lists or panels in any jurors' book, or in the certified copies thereof in his official custody, except in compliance with the directions of this Act, or neglects or refuses to prepare the jurors' book, the ballot papers necessary for drafting the panels, striking special juries and drawing juries at the trial, or neglects or omits to return the jurors' book and the ballot papers for drafting the jury lists to the court to which he is required to return the same, or neglects or omits to perform any other duty required of him by this Act, or wilfully does anything inconsistent with the provisions of this Act; or

On registrars
or deputy
clerks of
crown and
pleas altering
lists, etc.

(b) If a Registrar or Local Registrar of the Supreme Court or a Deputy Clerk of the Crown makes, or causes to be made, any alteration in the rolls, lists or panels in any jurors' book, or in any copy thereof deposited in his office, or wilfully certifies as true any copy of a jurors' book, or any roll, list or panel therein, which is not a true copy thereof; or

(c) If a Clerk of a local municipality, or any Assessment Commissioner, Assessor or other officer or person who, at the time of the annual meeting of the local selectors has the actual charge or custody of the assessment roll of such municipality for such year, neglects or omits to perform the duties required of him by section 17; or

On municipal officer not producing Assessment Roll as required.

(d) If a local selector wilfully selects, ballots and reports as qualified and liable to serve as a grand or petit juror any person who, according to the provisions of this Act, ought not to be so selected, balloted or reported, or takes money or other reward for selecting, balloting or reporting, or omitting to select, ballot or report any person, or wilfully inserts in such report a wrong description of the name, place of abode, or addition of any person so selected, balloted and reported, or neglects or omits to complete his selection, ballot and report, and to deposit the same in the proper office on or before the 25th day of October of the year for which he acts as local selector; or

On selectors of jurors for wilful dereliction of duty.

(e) If a Clerk of the Peace neglects or omits to perform any duty required of him in the manner herein prescribed, or wilfully does anything inconsistent with the provisions of this Act;

On clerks of peace for wilful dereliction of duty.

The person so offending shall for each offence forfeit the sum of \$200, one moiety whereof shall be paid over to the Treasurer of the county, and shall form part of the fund for the payment of petit jurors, and the other moiety thereof, with full costs, to any person who sues for the same in any court of competent jurisdiction; and every such action shall be tried by the judge without the intervention of a jury, and when the same has been commenced in the County Court the Judge of the County Court shall, upon the application of either party thereto by his order direct that the same shall be tried at a sittings of the High Court Division, and the record may thereafter be entered and the action tried at such sittings. 9 Edw. VII. c. 34, s. 109.

Amount of penalty and how to be applied.

110. All penalties under this Act, for which no other remedy is given, may be recovered on summary conviction under *The Ontario Summary Convictions Act*. 9 Edw. VII. c. 34, s. 110.

Recovery of penalties.
Rev. Stat. c. 90.

111.—(1) It shall be a contempt of court for any person interested in an action in any court, or his solicitor, counsel, agent or emissary before or during the sittings of court at which the action is, or is to be, entered for trial or may be tried, or at any time after a juror has been summoned, knowingly, directly or indirectly to speak to or consult with a juror upon the jury panel for such court respecting such action, or any matter or thing relating thereto.

Tampering with jurors.

Barrister, solicitor or student to be disbarred or suspended.

(2) Where a solicitor or barrister or student at law or articulated clerk is guilty of such offence he may, in addition to any other penalty, be struck from the roll of solicitors or be disbarred or suspended from the practice of his profession for a limited time or his name may be erased from the list of the Law Society or removed therefrom for a limited time by the Supreme Court upon motion at the instance and in the name of the Attorney-General.

Exception where juror is a party or witness.

(3) This section shall not apply where a juror is also a party to or a known witness or interested in the action or is otherwise ineligible as a juror in the action, nor to anything which may properly take place in the course of the trial or conduct of the action. 9 Edw. VII. c. 34, s. 111.

GENERAL PROVISIONS.

Posting up copies of sec. 180 of Criminal Code.

R.S.C. c. 146.

112. It shall be the duty of the sheriff at the sittings of the High Court Division for trials by jury and the Court of General Sessions of the Peace to post up in the court room and jury rooms and in the general entrance hall of the court house, printed copies in conspicuous type of section 180 of *The Criminal Code*. 9 Edw. VII. c. 34, s. 112.

Saving of former powers of Court and Judges except as altered.

113. Nothing in this Act shall alter, abridge or affect any power or authority which any court or judge has, or any practice or form in regard to trials by jury, juries or jurors, except in those cases only where such power or authority, practice or form is repealed or altered, or is inconsistent with any of the provisions hereof. 9 Edw. VII. c. 34, s. 113.

SCHEDULES OF FORMS.

SCHEDULE A.

(Section 23.)

REPORT OF LOCAL SELECTORS FROM ASSESSMENT ROLL.

Report of the selection and distribution of jurors for the Municipality of _____, in the County of _____, for the year 19____, made by _____, Mayor (or Reeve), and _____, Clerk, and by _____ and _____ Assessors (or by _____ Assessment Commissioner, and _____ and _____ Assessors, as the case may be), of the municipality, on the _____ day of _____, 19____, pursuant to the directions of *The Jurors' Act*. (See note 1.)

FIRST DIVISION.

*For the Roll of Grand Jurors to serve in the High Court Division
of the Supreme Court of Ontario.*

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Village or Ham- let, where known to the Selectors.	OCCUPATIONS.
John Anderson	16	2	Esquire.
Peter Cameron.....	4	6	Yeoman.
William O'Leary .....	..	Oatlands.	Gentleman.
Alfred Piper.....	17	1	Esquire.
etc.			

SECOND DIVISION.

*For the Roll of Grand Jurors to serve in His Majesty's Inferior
Courts of Criminal Jurisdiction.*

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Village or Ham- let, where known to the Selectors.	OCCUPATIONS.
William Adams	9	4	Gentleman.
Richard House.....	7	5	Yeoman.
Allan Thomas.....	24	5	Esquire.
Jacob Wyse.....	2	1	Tailor.
etc.			

THIRD DIVISION.

For the Roll of Petit Jurors to serve in the High Court Division of the Supreme Court of Ontario.

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Village or Ham- let, where known to the Selectors.	OCCUPATIONS.
David Boothe	11	7	Merchant.
Henry Grace .....	..	7	Yeoman.
Nathan Lowe	6	1	Shoemaker.
George Sullivan	3	4	Esquire.
etc.			

FOURTH DIVISION.

For the Roll of Petit Jurors to serve in His Majesty's Inferior Courts of Criminal and Civil Jurisdiction.

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Village or Ham- let, where known to the Selectors.	OCCUPATIONS.
William Carpenter	7	2	Esquire.
George Gule	7	8	Tailor.
Samuel Jones	15	3	Yeoman.
Thomas Hoole Rogers	11	1	Gentleman.
etc.			

We, the above-named local Selectors for the Municipality of _____, solemnly declare, each for himself, that we have made the selection and distribution of Jurors in this Report from the Assessment Roll of the municipality for the present year, to the best of our judgment and information, pursuant to the directions of *The Jurors' Act*, and that we have so made the same without fear, favour or affection of, to or for any person or persons whomsoever, gain, reward, or hope thereof, other than the fees to which we are entitled under the provisions of that Act.

Witness our hands and seals, the day and year last above written.

A. B. [L.S.] Mayor or Reeve.

C. D. [L.S.] Clerk.

E. F. [L.S.] Assessment Commissioner.

G. H. [L.S.] Assessor.

I. J. [L.S.] Assessor.

9 Edw. VII. c. 34, Sched. A.

SCHEDULE B.

(Section 25.)

JURORS' BOOK.

The JURORS' BOOK for the County of _____, for the year 19 ____.

(See note 1.)

1.—ROLL OF GRAND JURORS.

To serve in the High Court Division of the Supreme Court of Ontario.

(See note 2.)

No. on Roll.	NAMES.	No. of Lot or House.	Concession or Street, or Village or Ham- let.	OCCUPATIONS	No. on List.	REMARKS.
	1 KING, (Township)					
1	Anderson, John..	16	...	Esquire.		Exempted, having served on G.J. List H.C.D., 19
2	Aylof, Graham...	9	4	Gentleman.		
3	Bosworth, David.	11	7	Merchant.		
4	Cameron, Peter ..	4	6	Yeoman.		
	(Etc., to, say)					
20	Young, David....	7	8	Tailor.	3	
	2 MARKHAM, (Township.)					
21	Allan, Simon	21	7	Yeoman.		
22	Bolland, George..	5	12	Gentleman.	2	
	(Etc., to, say)					
31	Wilkinson, James	13	4	Esquire.		
32	Yates, Edward...	1	5	Yeoman.	144	
	3 NEWMARKET (Town.)					
	4 TORONTO, (City.)					
	26 YORK, (Township)					
503	Arthur, Thomas ..	3	2 from Bay.	Yeoman.	1	
504	Bull, Peter.....	14	1 E. Y'geSt.	Yeoman.		

These are to certify that I have carefully compared the above Grand Jurors' Roll with the Reports made by the local Selectors for the municipalities in the County of _____, for the year 19 ____, as such Reports remained with me as Clerk of the Peace on

No. on Panel.	NAMES.	No. of Lot or House.	Concession or Street, or Village or Ham- let.	Municipality.	Occupations	No. on Lists.	Remarks.
1	Arthur, Thomas	3	2 From Bay,	York.	Yeoman.	1	
2	Bolland, George (<i>Etc., to say</i>)	5	12	Mark- ham.	Gentleman.	2	
24	Yates, Edward.	1	5	Mark- ham.	Yeoman.	144	

Witness our hands, the day and year last above written.

A. B., Sheriff.

K. L., J. P.

M. N., J. P.

No. 2. (See note 4), etc.

4.—ROLL OF GRAND JURORS.

To serve in His Majesty's Inferior Courts (*see note 2*), of Criminal Jurisdiction. (*See note 3.*)

(Continue as in Form 1, substituting in the certificate for the words "High Court Division" the words "Inferior Courts of Criminal Jurisdiction.")

Witness my hand, this

day of

. 19 .

E. F., Clerk of the Peace.

5.—THE GRAND JURY LIST.

FOR the Inferior Courts (*see note 2*), as selected by the County
Selectors, for the County of _____, on _____ the
day of _____, 19____, pursuant to the directions of *The Jurors' Act*.

(Continue as in Form 2, substituting in the certificate for the words "High Court Division" the words "Inferior Courts of Criminal Jurisdiction.")

Witness our hands, this

day of

. 19 .

C. D., Chairman.

E. F., Clerk of the Peace.

6. GRAND JURY PANELS FOR THE INFERIOR COURTS.

(See note 2.)

No. 1.

PANEL of Grand Jurors returned upon a Precept from the Presiding Judge of the Court of General Sessions of the Peace for the County or District of _____, tested the _____ day of _____, 19____, for the return of thirteen of such Jurors for theittings of the Court of General Sessions of the Peace, to be held, etc. _____

Continue as in Form 3.

7. ROLL OF PETIT JURORS.

To serve in the High Court Division of the Supreme Court of Ontario. (*See notes 2 and 3.*)

No. on Roll.	NAMES.	No. of Lot or House.	Concession or Street, or Village or Hamlet.	Occupations	No. on List.	Remarks to be filled in by Sheriff, see sec. 73.
	1 KING. (Township)					
1	Adams, George...	16	2	Esquire.		
2	Aikins, William..	21	7	Yeoman.	2	
3	Alley, Simon....	25	3	Yeoman.		
4	Ashford, Thomas.	19	5	Yeoman.	3	
5	Barclay, John....	5	5	Gentleman.	1	
6	Cameron, William	11	7	Merchant.	5	
7	Daniels, George..	9	2	Shoemaker.	4	
8	Parley, Peter....	4	6	Yeoman.		
9	Small, William...	22	11	Yeoman.	6	
	(<i>etc., to say</i>)					
10	Worth, David....	7	8	Tailor.	7	
1060	Yarrold, George..	14		Baker.	288	
	2 MARKHAM. (Township). etc.					

These are to certify that I have carefully compared the above Petit Jurors' Roll with the Reports made by the local Selectors for the municipalities in the County of _____, for the year 19____, as such Reports remained with me as Clerk of the Peace on the 25th day of October of that year, and that such Petit Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and liable to serve as Petit Jurors for such county in the High Court Division.

Witness my hand, this _____ day _____, 19____.

E. F., Clerk of the Peace.

8.—THE PETIT JURY LIST.

For the High Court Division of the Supreme Court of Ontario
(see note 2), as selected for the county of _____
on _____, the _____ day of _____, 19____, pur-
suant to the directions of *The Jurors' Act*.

No. on List.	NAMES.	No. of Lot or House.	Concession or Street, or Village or Ham- let.	Residence.	Occupations	No. on Roll.	No. of Panel.	Remarks to be filled in by Sheriff, see sec. 73.
1	Adams, George..	5	5	King.	Gentleman.	5		
2	Alley, Simon ...	21	7	King.	Yeomen.	2	1	
3	Ashford, Thomas	2	19	King.	Yeomen.	4		
4	Barclay, John ..	19	8	King.	Shoemaker.	7		
5	Daniel, George..	9	5	King.	Merchant.	6		
6	Worth, David... (etc., to say)	11	16	King.	Yeoman.	9		
188	Yarrold, George.	14	9	King.	Baker.	1060	1	

These are to certify that on _____, the _____ day of _____, 19____, the foregoing Petit Jury List for the County of _____ for the High Court Division for the year 19____, was duly selected from the Roll of Petit Jurors to serve in the High Court Division for the same year, pursuant to the directions of *The Jurors' Act*.

Witness our hands, this _____ day of _____, 19____.

G. D., Chairman.

E. F., Clerk of the Peace.

9.—PETIT JURY PANELS.

FOR THE HIGH COURT DIVISION OF THE SUPREME COURT OF ONTARIO.

(See note 2.)

No. 1.

PANEL of Petit Jurors returned upon the Precept from the Honourable G.H., the Honourable J.J., etc., Justices of the High Court Division, tested the day of , 19 , for the return of such Jurors, for the Sittings of the High Court of Justice (or as the precept may require) to be held for the County of , on , the day of , 19 , as drafted on the day of , at the office of the Clerk of the Peace in , by A.B., Esquire, Sheriff, in the presence of K.L. and M.N., Esquires, Justices of the Peace for the County, pursuant to the directions of *The Jurors' Act*.

No. of Panel.	NAMES.	No. of Lot or House.	Concession or Street, or Village or Hamlet.	Municipality.	Occupations	No. on List.	Remarks.
1	Alley, Simon ... (etc., to say)	21	7	King.	Yeoman.	2	
48	Yarrold, George	14	9	King.	Baker.	288	

Witness our hands, the day and year last above written.

A. B., Sheriff.
K. L., J. P.
M. N., J. P.

No. 2. (See note 4.)

10.—SPECIAL JURY PANEL.

(Section 78.)

No. 1. (See note 2.)

PANEL of Special Jurors returned upon a Notice to the Sheriff in an action in the Supreme Court between N.O., Plaintiff, and P.Q., Defendant, as struck at the office of the Clerk of the Peace, in Toronto, on , the day of , 19 , by A.B., Esquire, Sheriff, in the presence of R.S., Solicitor for the Plaintiff, and T.A., Agent for the Solicitor of the Defendant (or in the presence of R.S., Solicitor for the Plaintiff, the Defendant's Solicitor, though served with the appointment, not appearing), pursuant to the directions of *The Jurors' Act*.

No. of Panel.	NAMES.	No. of Lot or House.	Concession or Street, or Village or Ham- let.	Municipality.	Occupations.	No. on Grand Jurors' Rolls.	Remarks.
1	Abbott, William	11	9	King.	Gentleman.	I.C.31	From G.J.
2	Wilkins, James	13	4	Mark- ham.	Esquire.		Roll for H.
	(Etc., to)						C. D. for
16	Young, David..	7	8	King.	Tailor.	H.C.D. 20	year 19 . No. 10, the G. J. Roll for this year being exhausted.

Witness my hand, the day and year last above written.

A. B., Sheriff.

No. 2. (See note 4.)

9 Edw. VII. c. 34, Sched B.

NOTE.—The corresponding Forms for the Inferior Courts of Civil and Criminal Jurisdiction shall be with appropriate changes Forms 7 to 10.

NOTES TO FORMS IN SCHEDULES A AND B.

(1) *This Title to be placed at the head of each page of the Book.*

(2) *So much of this Sub-Title as ends with this word to be placed at the head of each page of the Book appropriated to this class of entries.*

(3) *This Roll to be commenced on a new page, after leaving a sufficient number of leaves for the Jury List to be selected from the preceding Roll and the probable number of Panels that may be drafted from such List in the course of the year.*

(4) *The subsequent Panels following immediately may be commenced on the same page on which the preceding one is closed.*

SCHEDULE C.
(Section 91.)

PAY LIST for Petit Jurors who have attended the Sittings of the _____ day of _____, and ended on the _____ day of _____, begun on the _____ day of _____, 19 _____, (as the case may be), held for the _____ day of _____, 19 _____.

NAMES OF JURORS.	Number of miles travelled in coming to Court.	Check of Attendance.						Amount to be paid to Juror.		Jurors' signature acknowledging receipt of money.
		1st day.	2nd day.	3rd day.	4th day.	5th day.	6th day.	7th day.	8th day.	
John Just.	21	present	present	present	present	present	present	present		
Charles Careless.....	.....	absent	absent	absent	absent	absent	absent	absent		

I, _____, Sheriff of _____, do hereby certify to the Treasurer of the _____, that the above is to the best of my knowledge, a correct return of the number of miles travelled by each Juror in coming to the Court; a true check of the number of days every such Juror attended the Court, and the just sum to which every Juror on the above list is entitled.

A. B., Sheriff.
9 Edw. VII. c. 34, Sched. C.

SCHEDULE D.

FORM 1.

(Section 45.)

George the Fifth, by the Grace of God, King, &c.

Ontario
County (or District) of

To Wit:

To the Sheriff of the of

You are commanded that you cause to come before the Judge or other person holding the sittings of the High Court Division (or County or District Court) (or the Court of General Sessions of the Peace) at in your Bailiwick, on the day of , 19 , all panels concerning such sittings (*and when the sittings are for the trial of criminal as well as civil cases*), and also cause to come thirteen good and lawful men of your Bailiwick duly qualified to serve as Grand Jurors at the said sittings; and also summon a competent number, being not less than good and lawful men duly qualified to serve as Petit Jurors for the trial of (Criminal and) Civil issues; and that you and your deputy Sheriff, Bailiffs, and other officers then and there attend in your proper persons to do those things which to your and their offices appertain. And that you have then and there the names of all Jurors and Constables whom you shall cause to come before us. And have then and there this Precept.

Dated at , this day of , 19 .

FORM 2.

(Section 63 (1).)

To

Take notice that you are required to attend the sittings of the High Court Division (or County or District Court) (or the Court of General Sessions of the Peace) to be held at , in the County (or District) of , on the day of 19 , as a Grand (or Special, or Petit) Juror, and in default of your so attending you will be liable to the penalties provided by *The Jurors' Act*.

Dated at , the day of 19 ,
Sheriff of the County (or District)
of

FORM 3

(Section 63 (3).)

To the Sheriff of the County or District of

Take notice that there is no (civil or criminal, as the case may be) business requiring the attendance of a jury at the ensuing sittings of the High Court Division (or the court of) to be holden on the day of , 19 , and that the attendance of jurymen at such sittings is not required.

Dated at , this day of , 19 .

Deputy Clerk of the Crown (or Local Registrar of the Supreme Court, Clerk of the County Court or Clerk of the Peace, as the case may be) for the County or District of

FORM 4.

(Section 63 (5).)

To

Take notice that there being no business requiring the attendance of jurymen at the sittings of the High Court Division (or the court of), to be holden on the day of , 19 , your attendance as a jurymen at such sittings is not required, and the summons served upon you for your attendance is cancelled.

Further take notice that in case you attend at such sittings after the receipt by you of this notice you will not be entitled to any fees or mileage for such attendance.

This notice is given pursuant to *The Jurors' Act*.

Dated at , this day of , 19 .

Sheriff of the County (or District) of

9 Edw. VII. c. 34, Sched. D.

5. *PROCEDURE IN CIVIL MATTERS.*

CHAPTER 65.

An Act respecting Arbitration and References.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Arbitration Act*. 9 Edw. Short title. VII. c. 35, s. 1.

2. In this Act,

Interpretation.

(a) "Court" shall mean the Supreme Court;

"Court."

(b) "Judge" shall mean a Judge of the Supreme Court; "Judge."

(c) "Rules of court" shall mean the rules of the Supreme Court made under *The Judicature Act*;

"Rules of court."

Rev. Stat. c. 56.

(d) "Submission" shall mean a written agreement to submit present or future differences to arbitration, whether or not an arbitrator is named therein. 9 Edw. VII. c. 35, s. 2,

"Submission."

APPLICATION OF ACT.

3. This Act shall apply to an arbitration to which His Majesty is a party. 9 Edw. VII. c. 35, s. 3.

To the Crown.

4. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorized or recognized by that Act. 9 Edw. VII. c. 35, s. 4.

References under statutory powers.

REFERENCES BY SUBMISSION.

Generally.

5. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court, and shall have the same effect as if it had been made an order of court. 9 Edw. VII. c. 35, s. 5.

Irrevocability of submission. Effect.

What submission to include.

6. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in Schedule A, so far as they are applicable to the reference. 9 Edw. VII. c. 35, s. 6.

Official referee to act when applied to.

7. Where a submission provides that the reference shall be to an official referee any official referee to whom application is made shall hear and determine the matters agreed to be referred. 9 Edw. VII. c. 35, s. 7.

Staying legal proceedings taken after submission.

8. If any party to a submission, or any person claiming through or under him, commences any legal proceeding in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceeding may at any time after appearance and before delivering any pleading or taking any other step in the proceeding apply to that court to stay the proceeding; and that court, or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was at the time when the proceeding was commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceeding. 9 Edw. VII. c. 35, s. 8.

Appointment of Arbitrator or Umpire by Court.

9.—(1) In any of the following cases:

Failure to concur.

(a) Where a submission provides that the reference shall be to a single arbitrator and the persons whose concurrence is necessary do not, after differences have arisen, concur in the appointment of an arbitrator; or

Failure to appoint.

(b) Where an arbitrator, an umpire or a third arbitrator is to be appointed by any person, and such person does not make the appointment; or

Vacancies not filled.

(c) Unless the submission otherwise provides, where an arbitrator, an umpire or a third arbitrator refuses to act or is incapable of acting or dies, and the vacancy is not supplied by the person having the right to fill the vacancy,

Remedy.

any party may serve the other party or the arbitrators, or the person who has the right to make the appointment, as the case may be, with a written notice to concur in the appointment of a single arbitrator or to appoint an arbitrator, umpire or third arbitrator.

When court may appoint.

(2) If the appointment is not made within seven clear days after the service of the notice the Court or a Judge may, on application by the party who gave the notice, appoint an arbi-

trator, umpire or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties. 9 Edw. VII. c. 35, ^{Powers of} s. 9. ^{appointee.}

Powers of Arbitrators.

10. An arbitrator or umpire acting under a submission shall, unless the submission expresses a contrary intention, ^{Powers of} have power ^{arbitrators.}

(a) to administer oaths to the parties and witnesses;

(b) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court; and

(c) to correct in an award any clerical mistake or error arising from any accidental slip or omission. 9 Edw. VII. c. 35, s. 10.

11. The time for making an award may from time to time be enlarged by the Court or a Judge whether or not the time for making the award has expired. 9 Edw. VII. c. 35, s. 11. ^{Enlarging} ^{time for mak-} ^{ing award.}

12.—(1) The Court may remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire. ^{Remitting for} ^{reconsidera-} ^{tion.}

(2) The arbitrators or umpire shall, unless the order otherwise directs, make the award within three months after the date of the order. 9 Edw. VII. c. 35, s. 12. ^{When award} ^{to be made.}

13.—(1) Where an arbitrator or umpire has misconducted himself the Court may remove him. ^{Removal of} ^{arbitrator.}

(2) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside. 9 Edw. VII. c. 35, s. 13. ^{Setting aside} ^{award.}

14. An award may, by leave of the Court or a Judge, be enforced in the same manner as a judgment or order to the same effect. 9 Edw. VII. c. 35, s. 14. ^{Enforcing} ^{award.}

Witnesses and Evidence.

15. Any party to a submission may sue out of the Court a writ of subpoena *ad testificandum*, or a writ of subpoena *duces tecum*, but no person shall be compelled under any such writ to produce any document which he would not be compellable to produce on the trial of an action. 9 Edw. VII. c. 35, s. 15. ^{Subpoenaing} ^{witnesses.} ^{Production.}

Commission
to examine
witnesses.

16.—(1) Where a party to a submission desires to procure for use upon the reference the evidence of any person to be taken *de bene esse* or to be taken out of Ontario, an order may be made for the examination of such person or for the issue of a commission in the like circumstances and with the like effect as a similar order may be made in an action.

Application of
Rev. Stat.
c. 56 and Rules.

(2) The provisions of *The Judicature Act* and Rules of court shall apply to such order or commission and to the proceedings thereon and the evidence taken thereunder. 9 Edw. VII. c. 35, s. 16.

Appeal from Award.

Where sub-
mission pro-
vides for
appeal.

17.—(1) Where it is agreed by the terms of the submission that there may be an appeal from the award the reference shall be conducted and an appeal shall lie to a Judge of the Supreme Court and to a Divisional Court in the same manner, and subject to the same restrictions, as in the case of a reference under an order of the court.

Transmission
of evidence.

(2) The evidence of the witnesses examined upon such reference shall be taken down in writing and shall, at the request of either party, be transmitted by the arbitrator or umpire, as the case may be, together with the exhibits, to the Central Office at Osgoode Hall.

Statement of
proceeding on
a view or
special know-
ledge of ar-
bitrators.

(3) Where the arbitrators proceed wholly or partly on a view or any knowledge or skill possessed by themselves or any of them they shall also put in writing a statement thereof sufficiently full to enable a judgment to be formed of the weight which should be attached thereto. 9 Edw. VII. c. 35, s. 17.

FEEES AND COSTS.

Interpretation.

18. In sections 19 to 27,

"Arbitrator."

"Arbitrator" and "arbitrators" shall include an umpire and a referee in the nature of an arbitrator; and

"Award."

"Award" shall include umpirage and a certificate in the nature of an award. 9 Edw. VII. c. 35, s. 18.

Fees to arbi-
trators not
being barris-
ters, archi-
tects, etc.

19. An arbitrator, who is not by profession a barrister, solicitor, engineer, architect, or Dominion or Ontario land surveyor, shall not be entitled to demand or take for his attendance and services as an arbitrator any greater fees than those mentioned in Schedule B, except as provided in section 21. 9 Edw. VII. c. 35, s. 19.

Fees to arbi-
trators being
barristers,
architects, etc.

20. An arbitrator, who is by profession a barrister, solicitor, engineer, architect, or Dominion or Ontario land surveyor, shall not be entitled to demand or take for his attendance

and services as an arbitrator any greater fees than those mentioned in Schedule C, except as provided in section 21. 9 Edw. VII. c. 35, s. 20.

21. The parties to a submission may agree, by writing signed by them or by making such agreement a part of the submission, to pay to the arbitrator or to the arbitrators, if more than one, such fees for each day's attendance, or such gross sum for taking upon themselves the burden of the reference and making the award, as the parties see fit, and in every such case the fees or sum so agreed upon shall be substituted for those mentioned in Schedules B and C, and shall be taxed by the taxing officer accordingly. 9 Edw. VII. c. 35, s. 21.

Agreement
as to
fees to
be paid to
arbitrators.

22. No greater fees shall be taxed to a person called as a witness before an arbitrator than would be taxed to him in an action in the Supreme Court. 9 Edw. VII. c. 35, s. 22.

Fees to
witnesses.

23. Where, at a meeting of arbitrators of which due notice has been given, no proceedings are taken in consequence of the absence of any party, or of a postponement at the request of any party, the arbitrators shall make up an account of the costs of the meeting, including the proper charges for their own attendance and that of any witnesses, and of the counsel or solicitor of the party present, and not desiring the postponement, and unless under the special circumstances of the case they think that it would be unjust so to do, they shall charge the amount thereof, or of the disbursements, against the party in default or at whose request the postponement is made, and the last mentioned party shall pay the same to the other party, whatever may be the event of the reference, and the arbitrators shall, in the award, make any direction necessary for that purpose, and the amount so charged may be set off against, and deducted from, any amount awarded in his favour. 9 Edw. VII. c. 35, s. 23.

Costs of meet-
ing where no
proceedings.

24.—(1) Any party to an arbitration shall be entitled to have the costs thereof, including the fees of the arbitrators, or such fees alone, taxed by one of the taxing officers of the Supreme Court, at Toronto upon an appointment which may be given by the taxing officer for that purpose on the filing of an affidavit setting forth the facts.

Taxation at
instance of
parties.

(2) A taxation of the fees of the arbitrators may be had upon an appointment given at the instance of the arbitrators or any of them upon a like affidavit. 9 Edw. VII. c. 35, s. 24.

At instance of
arbitrators.

25.—(1) The taxing officer shall in no case, except as provided in section 21, tax higher fees than are mentioned in Schedules B and C, but, upon reasonable grounds, he may reduce the maximum mentioned in the Schedules, but not below the minimum, having always regard to the length of

Discretion of
taxing officer.

the arbitration, the value of the matter in dispute, and the difficulty of the questions to be decided; but he shall not tax more than one counsel fee to either party for any meeting of the arbitrators.

Costs of
award.

(2) The taxing officer may tax a reasonable sum for preparing the award.

Revision of
taxation.

(3) An appeal may be had from such taxation in the same manner as from a taxing officer's certificate of taxation in an action. 9 Edw. VII. c. 35, s. 25.

Penalty for
arbitrator
attempting to
exact exces-
sive fees.

26. An arbitrator who, after having entered upon the reference, refuses or delays after the expiration of one month from the publication of the award to deliver the same until a larger sum is paid to him for his fees than is by this Act permitted, or who receives for his award or for his fees as arbitrator any such larger sum, shall forfeit and pay to the party who has demanded delivery of the award or who has paid to the arbitrator such larger sum in order to obtain, or as a consideration for having obtained it, treble the excess so demanded or received by the arbitrator contrary to the provisions of this Act, to be recovered by action in a court of competent jurisdiction. 9 Edw. VII. c. 35, s. 26.

Arbitrator to
have action
for fees.

27. Where an award has been made the arbitrator may maintain an action for his fees after the same have been taxed; and in the absence of an express agreement to the contrary he may maintain such action against all the parties to the reference, jointly or severally. 9 Edw. VII. c. 35, s. 27.

GENERAL PROVISIONS.

Order to sher-
iff to produce
prisoner as
witness.

28. A Judge may order the sheriff, gaoler or other officer having the custody of a prisoner to produce him for examination before an arbitrator or an umpire. 9 Edw. VII. c. 35, s. 28.

Case stated for
opinion of
Court.

29. An arbitrator or an umpire may at any stage of the proceedings and shall, if so directed by the Court, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference. 9 Edw. VII. c. 35, s. 29.

Costs in dis-
cretion of
Court.

30. An order made under this Act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just. 9 Edw. VII. c. 35, s. 30.

Dispensing
with filing
original
exhibits.

31. An arbitrator or an umpire, where no special reason appears to him to exist for filing an original book, paper or document as an exhibit, as hereinbefore provided, may allow a copy thereof or of such portion thereof as he may deem material to be substituted as an exhibit in the place of the original book, paper or document. 9 Edw. VII. c. 35, s. 31.

32. Upon an appeal from or motion to set aside an award any party may by notice require any other party to produce, and the party so required shall produce upon the hearing of the appeal or motion any original book, paper or document in his possession which has been used as an exhibit or given in evidence upon the reference, and which has not been filed with the depositions. 9 Edw. VII. c. 35, s. 32.

Production of exhibits on appeal or motion to set aside award.

33.—(1) Unless by leave of the Court or a judge, an application to set aside an award, otherwise than by way of appeal, shall not be made after six weeks from the publication of the award.

Time for moving to set aside.

(2) Such leave may be granted before or after the expiration of the six weeks.

Time within which leave may be granted.

(3) In the computation of time for appealing against, or applying to set aside an award, the vacations shall not be reckoned. 9 Edw. VII. c. 35, s. 33.

Vacations not reckoned.

(4) When an award is set aside the Court or a Judge setting aside the same may give directions as to the costs of the reference and award. 3-4 Geo. V. c. 18, s. 16.

Costs of reference and award when award set aside.

34. Rules of court for the better carrying out of the purposes of this Act and regulating the practice thereunder may be made by any authority to whom is committed power of making rules of court. 9 Edw. VII. c. 35, s. 34.

Powers to make rules.

35. Any Act, enactment or instrument referring to any Act or enactment repealed by the Act passed in the 60th year of the reign of Her late Majesty Queen Victoria, Chaptered 16, intituled *An Act for Amending and Consolidating the enactments respecting References and Arbitration*, or by this Act shall be construed as referring to this Act. 9 Edw. VII. c. 35, s. 35.

Construction of reference to repealed enactments.

VALUATORS.

36.—(1) The Court or a Judge shall have power to appoint a valuator, valuer or appraiser, where it is provided by a written agreement that a valuation or appraisal shall be made by a valuator, valuer or appraiser.

Appointment of valuator, etc.

(2) The power may be exercised in the like cases and the proceedings shall be the same as provided by section 9, except that the Court or a Judge shall not have power to appoint a valuator, valuer or appraiser in the place of one who is named in the agreement and who refuses to act, is incapable of acting or dies. 9 Edw. VII. c. 35, s. 36.

When power exercisable. Procedure thereon. Excepted case.

SCHEDULE A.

(Section 6.)

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

(a) If no other mode of reference is provided, the reference shall be to a single arbitrator.

(b) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

(c) If any arbitrator or umpire or third arbitrator refuses to act, or is incapable of acting or dies the party or parties, or the arbitrators by whom he was appointed, may appoint an arbitrator, umpire or third arbitrator, as the case may be, in his stead, and this power may be exercised from time to time as vacancies occur.

(d) The submission shall not be revoked by the death of the parties or either of them.

(e) The award shall be delivered to any of the parties requiring the same; and the personal representatives of any party deceased may require delivery of the award.

(f) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award.

(g) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire, a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

(h) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

(i) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath in relation to the matters in dispute, and shall subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings, documents and things within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

(j) The witnesses on the reference shall be examined on oath.

(k) The award to be made by the arbitrators or by a majority of them or by the umpire shall be final and binding on all the parties and the persons claiming under them respectively.

(l) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may award costs to be paid as between solicitor and client.

SCHEDULE B.

(Section 19.)

FEES CHARGEABLE BY NON-PROFESSIONAL ARBITRATORS.

For every meeting where the reference is not proceeded with, but a postponement is made at the request of any party,	
not less than	\$2 00
Nor more than	4 00
For every day's sittings, to consist of not less than six hours,	
not less than	5 00
Nor more than	10 00
Where a day's sittings consists of more than six hours,	
For each additional hour, not less than	1 00
Nor more than	1 50
For every sittings not extending to six hours (fractional parts of hours being excluded) where the reference is actual- ly proceeded with, for each hour occupied,	
Not less than	1 00
Nor more than	1 50

9 Edw. VII. c. 35, Schedule B.

SCHEDULE C.

(Section 20.)

FEES CHARGEABLE BY PROFESSIONAL ARBITRATORS.

For every meeting where the reference is not proceeded with, but a postponement is made at the request of any party,	
not less than	\$4 00
Nor more than	8 00
For every day's sittings, to consist of not less than six hours,	
not less than	10 00
Nor more than	20 00
Where a day's sittings consists of more than six hours,	
For each additional hour, not less than	2 00
Nor more than	3 00
For every sittings not extending to six hours (fractional parts of hours being excluded) where the reference is actual- ly proceeded with, for each hour occupied,	
Not less than	2 00
Nor more than	3 00

9 Edw. VII. c. 35, Schedule C.

CHAPTER 66.

An Act enabling Boards of Trade in Cities to appoint General Arbitrators for certain purposes.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title.** **1.** This Act may be cited as *The Boards of Trade General Arbitration Act*. 9 Edw. VII. c. 36, s. 1.
- Interpretation.** **2.** In this Act "Board" shall mean the Board of Trade of the City of Toronto. 9 Edw. VII. c. 36, s. 2.
- Chamber of arbitration.** **3.** The Council of the Board shall from time to time determine the number of persons which, in the opinion of the Council, shall be sufficient to form a Chamber of Arbitration, from whom boards of arbitration may be selected to hear and decide controversies, disputes and misunderstandings which may be voluntarily submitted to them for arbitration. 9 Edw. VII. c. 36, s. 3.
- Nomination of persons to act as arbitrators.** **4.—(1)** The Council shall nominate not less than thirty persons who shall have given their consent in writing to act as arbitrators, from whom there shall be elected by ballot by the members of the Board at a special meeting called for that purpose the number so determined upon by the Council as sufficient to form a Chamber of Arbitration.
- Qualification.** **(2)** Any person so elected may but need not be a member of the Board.
- Persons elected to be gazetted.** **(3)** Immediately after the election a list of the persons elected shall be published in the *Ontario Gazette* and such other newspapers as the Council of the Board may determine.
- Term of office of arbitrators.** **(4)** The appointment shall be for two years from the date of the election, but if at the expiration of the two years an arbitration shall be pending before an arbitrator his appointment, so far as such unfinished business is concerned, shall continue until such business is determined.
- Names of arbitrators to be kept posted up.** **(5)** The names of the members of the Chamber of Arbitration shall be kept continuously posted in the offices of the Board. 9 Edw. VII. c. 36, s. 4.
- Arbitrators to be sworn.** **5.—(1)** The persons so elected before acting shall take and subscribe an oath, Form 2.

(2) The oath shall be filed with the Secretary of the Board. Oath to be filed.
9 Edw. VII. c. 36, s. 5.

6. If any person so elected is convicted of an indictable offence his appointment shall forthwith be vacated, and, if he is engaged in an arbitration before three arbitrators, the other two arbitrators shall have all the powers of the three to continue such arbitration and make an award. 9 Edw. VII. c. 36, s. 6. Disqualification of arbitrators.

7. The Board shall provide persons who submit to arbitration under this Act with a place in which the arbitration may be held and with all necessary forms and papers, and shall assist them in the course of the arbitration. 9 Edw. VII. c. 36, s. 7. Rooms to be provided.

8. The Secretary of the Board shall be *ex-officio* Registrar of all boards of arbitration unless the Board of Trade makes a special appointment, and the duties of the Registrar, in addition to any duties which the Council of the Board may by rules in writing prescribe, shall be Registrar and his duties.

(a) to receive submissions and payment of fees and costs;

(b) to notify the arbitrators of their appointment;

(c) to give notice of hearing to the parties;

(d) to issue summonses for the attendance of witnesses and the production of documents;

(e) to keep a register of submissions, awards and reconciliations, and such other books and memoranda, and to make such returns as the Council of the Board shall require;

(f) to render such assistance to the arbitrators as they may require; and

(g) to carry out generally the instructions of the Board of Trade. 9 Edw. VII. c. 36, s. 8.

9. All arbitrations shall be held before one, two or three arbitrators, according to the agreement of the parties. Number of arbitrators at arbitrations.
9 Edw. VII. c. 36, s. 9.

10. A submission to arbitration may be according to Form 1, and when filed with the Registrar shall not be revocable. Submission not revocable.
9 Edw. VII. c. 36, s. 10.

11. The Registrar on the application of any party may issue a summons, Form 3, requiring the attendance of a witness, and the production of any document or thing before the arbitrators; and disobedience of such summons by any Compelling attendance of witnesses.

witness shall render him liable to the same extent and in the same manner as the disobedience of a subpoena issued out of the Supreme Court. 9 Edw. VII. c. 36, s. 11.

Witnesses to be examined on oath.

12. Persons giving evidence before the arbitrators shall be examined on oath, which may be administered by an arbitrator or by the Registrar. 9 Edw. VII. c. 36, s. 12.

Production of documents by parties.

13. The parties shall produce before the arbitrators all documents and things in their possession or control which the arbitrators may require. 9 Edw. VII. c. 36, s. 13.

When arbitrators may proceed *ex parte*.

14. The arbitrators may proceed in the absence of any party who, after reasonable notice, does not attend on the reference unless he has previously shown to the arbitrators good cause for not attending. 9 Edw. VII. c. 36, s. 14.

Power to enlarge time for award.

15. The arbitrators shall make their award within twenty-one days after the making of the submission, or on or before any later day to which they may in writing signed by them from time to time enlarge the time for making the award. 9 Edw. VII. c. 36, s. 15.

Award to be in writing.

16. The arbitrators shall make and publish their award in writing signed by the arbitrators making the same, and shall deposit it with the Registrar; and every party to the reference may have a copy thereof upon payment of ten cents per folio of one hundred words, and of the fees hereinafter provided for. 9 Edw. VII. c. 36, s. 16.

Arbitrations to continue *de die in diem*.

17. The reference shall be continued from day to day so far as circumstances permit, and subject to such adjournments as the arbitrators shall think necessary or just. 9 Edw. VII. c. 36, s. 17.

Barristers and solicitors.

18. If a party desires to be represented by a barrister, solicitor or agent, he shall, before the hearing, give two days' notice thereof to the Registrar, who shall forthwith inform the other party, who thereafter may be represented by a barrister, solicitor or agent without any notice. 9 Edw. VII. c. 36, s. 18.

Authority of agents.

19. Every person other than a barrister or solicitor appearing as the representative of a party shall file with the Registrar a letter signed by the party authorizing such person to represent him; otherwise such person shall not, without the consent of the other party, take any part in the proceedings. 9 Edw. VII. c. 36, s. 19.

Special case.

20. The attendance of parties may be dispensed with if they prefer jointly to state a case, to be filed with the Registrar, and agree to accept the decision of the arbitrators

thereon, and the award shall then be made on such stated case. 9 Edw. VII. c. 36, s. 20.

21. The sittings shall not be considered public and no person except the parties and their representatives and witnesses shall be admitted thereto without the permission of the arbitrators which shall not be given if objected to by any of the parties, or be given to newspaper reporters without the special request of all parties. 9 Edw. VII. c. 36, s. 21.

22. Unless they otherwise agree, at least five clear days' notice of the time fixed for proceeding with the reference shall be given by the Registrar to all parties to the submission. 9 Edw. VII. c. 36, s. 22.

23. There shall be no appeal from the award, but it may be set aside for fraud or for misconduct but not for any other cause, and, unless so set aside, it shall be binding and conclusive upon the parties to the submission and shall be a final settlement of the matter in difference. 9 Edw. VII. c. 36, s. 23.

24. The costs of the reference and award shall be in the discretion of the arbitrators, who shall have power to direct to and by whom and in what manner and within what time the same shall be paid, but no fees or costs shall be payable except witness fees, arbitrators' fees, Registrar's fees and office fees. 9 Edw. VII. c. 36, s. 24.

25. Unless the parties agree in writing to pay specified fees of a larger amount the following fees shall be allowed:

- (a) To each arbitrator who shall be present at the hearing of the case, a fee of not more than \$5 for each sitting;
- (b) For office fee, including Registrar's assistance, forms, and room, \$5 for the first sitting, and \$3 for each sitting thereafter, of which the arbitrator shall apportion so much as they may see fit to the Registrar for his attendance. 9 Edw. VII. c. 36, s. 25.

26.—(1) Unless the parties otherwise agree in writing the award may be made by a majority of the arbitrators.

(2) Any act which is directed by this Act to be or which may be done by a board of arbitrators shall be valid if done by any two of them; and in case of the appointment of three arbitrators the neglect or refusal of any arbitrator to act shall not invalidate the proceedings taken by the majority of the arbitrators appointed. 9 Edw. VII. c. 36, s. 26.

27.—(1) If the parties to the submission do not take up the award within seven days after notice of the publication thereof has been sent by the Registrar to them by registered post at their last known place of business or residence, the

Registrar may obtain an order from the arbitrators or a majority of them for the payment of the fees hereinbefore provided for.

Filing order and issuing execution in the county court of York.

(2) Upon such order being produced to the Clerk of the County Court of the County of York he shall file the same, and shall issue execution in the name of the Registrar against the goods and lands of the parties named therein as upon a judgment in such Court, for the amount of such fees and the costs proper to be taxed in the discretion of such Clerk for the order and execution; and such execution shall have the same force and effect as an execution in an action in such Court. 9 Edw. VII. c. 36, s. 27.

Council of Board of Trade may make rules.

28.—(1) The Council of the Board may make rules and regulations not inconsistent with the provisions of this Act for the efficient carrying out of the objects of this Act and the awards made thereunder.

Approval thereof by Lieutenant-Governor in Council.

(2) The rules and regulations so made shall not take effect until approved by the Lieutenant-Governor in Council. 9 Edw. VII. c. 36, s. 28.

Act not to affect arbitrations between members of the board.

29. This Act shall not interfere with or affect the provisions of the Acts relating to the Board of Trade of the City of Toronto, or to arbitrations between the members thereof, or to the by-laws and rules framed under such Acts. 9 Edw. VII. c. 33, s. 29.

Formation of boards of arbitration in other cities.

30.—(1) Upon the application of a Board of Trade duly formed in pursuance of the Revised Statutes of Canada, chapter 124, respecting the incorporation of Boards of Trade or otherwise, in any city having a population of not less than 30,000 according to the last preceding Dominion or municipal census, the Lieutenant-Governor in Council may direct that such Board of Trade may avail itself of the provisions of this Act and form a Chamber of Arbitration, as provided by this Act in the case of the Board of Trade of the City of Toronto, and the provisions of this Act, *mutatis mutandis*, shall apply to such Board of Trade.

Evidence of population of city.

(2) The Order in Council shall be conclusive evidence that the city named therein is a city of 30,000 inhabitants.

Order to be laid before the Assembly.

(3) A copy of the Order in Council shall be laid before the Assembly at the first session after the passing thereof. 9 Edw. VII. c. 36, s. 30.

Application of Rev. Stat. c. 65.

31. Where not inconsistent with the provisions of this Act the provisions of *The Arbitration Act*, excepting clause (b) of section 9 and section 29, shall apply to an arbitration under this Act. 9 Edw. VII. c. 36, s. 31.

FORM 1.

(Section 10.)

SUBMISSION TO ARBITRATION.

Agreement made this day of 19 ,
between of and of

Whereas differences have arisen between the parties hereto in respect of and they have agreed to refer such differences to arbitration upon the terms and conditions contained in the Act of the Legislature of the Province of Ontario intituled *The Boards of Trade General Arbitration Act*.

Now it is hereby agreed by the said parties that all matters in difference between them in relation to the premises shall be and are hereby referred to (or to and) and, in case they cannot agree upon a third arbitrator within three days, to such third arbitrator as the Registrar of the Chamber of Arbitration may select (or as the case may be).

In witness whereof the said parties have hereunto set their hands and seals.

Signed, sealed and delivered	}	[L.S.]
in the presence of		[L.S.]

9 Edw. VII. c. 36, Form 1.

FORM 2.

(Section 5 (1).)

FORM OF OATH OF ARBITRATORS.

I, solemnly swear that I will faithfully, diligently and impartially perform my duties as arbitrator, and I will in all cases submitted to me, give a true and just award according to the best of my judgment and ability, without fear, favour or affection of or for any party or person whomsoever. So help me God.

9 Edw. VII. c. 36, Form 2.

FORM 3.

(Section 11.)

SUMMONS TO WITNESS.

In the matter of an Arbitration between *A.B.* and *C.D.* under
The Boards of Trade General Arbitration Act.

To *E.F.*

I do hereby in the exercise of the powers in that behalf given by the said Act, summon and require you to attend at on the day of 19 , at the hour of in the noon before the arbitrator (or arbitrators) there to be examined and give evidence on behalf of and also to bring with you and produce at the time and place aforesaid (*specify documents or things to be produced*).

In default of your attending at the time and place aforesaid you are liable to be proceeded against under the provisions of the Act.

In witness whereof I have hereto set my hand this
day of 19 .

A.B.,
Registrar of the Board of Arbitration.

9 Edw. VII. c. 36, Form 3.

CHAPTER 67.

An Act respecting Disputes concerning Boundary Lines.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Boundary Line Dispute* Short title Act. 10 Edw. VII. c. 33, s. 1.

2. This Act shall not apply to land situate in any city, town or village. 10 Edw. VII. c. 33, s. 2. Application of Act.

3.—(1) Where in any action or other proceedings, commenced on or after the 7th day of April, 1896, it appears to a judge that a material question to be judicially determined between the parties is the true definition of a boundary line between adjoining lands, such question may be referred for trial to a special referee, who shall be an Ontario Land Surveyor. Reference of boundary line question to surveyor.

(2) The Surveyor shall, by a proper survey as directed by *The Surveys Act*, and upon hearing, where he deems it necessary, the evidence under oath adduced by the parties and their counsel, if any, define upon the ground by such posts and monuments as he deems sufficient, the true boundary or division line so in dispute. Proceedings. Rev. Stat. c. 166.

(3) The Surveyor shall make a report to the Court and shall therein set forth his mode of procedure and what he has done in the premises, and also such further or other facts and circumstances as may be necessary to enable the Court to finally determine the question and how the costs should be borne. 10 Edw. VII. c. 33, s. 3. Report.

4. An application for a reference may be made to a Judge in Chambers by any party to the litigation, at any time after the commencement of the action or other proceeding, upon an affidavit of any person familiar with the facts, and shall be subject to the rules of practice applicable to applications in Chambers. 10 Edw. VII. c. 33, s. 4. Application for reference.

5. The reference shall be regarded as a reference under section 64 of *The Judicature Act*. 10 Edw. VII. c. 33, s. 5. Reference to be subject to Rev. Stat. c. 66.

6.—(1) The parties to the litigation may agree upon the Ontario Land Surveyor to be appointed special referee. Agreement as to referee.

Where parties fail to agree.

(2) If they fail to agree he shall be named by the Judge, but the Judge shall not name a Surveyor who has theretofore been concerned in the survey of the land in question or any part thereof, or who has been otherwise engaged in directing a survey which affects or might affect such lands, or which involves the determination of a like question to that in dispute, or who is or has been at any time within ten years prior thereto a resident of the county in which the lands the boundary line whereof is in question are situate. 10 Edw. VII. c. 33, s. 6.

When reference may be dispensed with.

7. If, upon the application, it shall appear that from the nature of the other issues to be determined in the litigation or for other good cause it would be a saving of expense or otherwise to the advantage of both parties not to direct a reference, the reference may be dispensed with and the question in issue shall be tried as if this Act had not been passed. 10 Edw. VII. c. 33, s. 7.

Reference of disputed boundary lines by consent of parties.

8. Where all parties to a dispute concerning a boundary line consent a summary application may be made to the judge of the county or district court of the county or district in which the lands are situate to appoint a special referee under this Act, without any proceedings having been commenced or being then pending, and the referee shall proceed as hereinbefore directed, and his report concerning the premises shall have the force and effect of a final award between the parties concerning the disputed boundary line, and may be registered by either party thereto in the proper registry office against the lands affected thereby. 10 Edw. VII. c. 33, s. 8.

Construction of this Act. Rev. Stat. c. 56.

9. This Act shall be read and construed as *in pari materia* with *The Judicature Act*, and with the General Rules of practice and procedure of the Supreme Court applicable to the subject matter hereof. 10 Edw. VII. c. 33, s. 9.

CHAPTER 68.

An Act respecting Lunatics.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Lunacy Act*. 9 Edw. VII. Short title
c. 37, s. 1.

2. In this Act,

Interpretation.

- (a) "Contingent right," as applied to land, shall include "Contingent right." a contingent and an executory interest; a possibility coupled with an interest whether the object of the gift or limitation or such interest or possibility is or is not ascertained, and a right of entry whether immediate or future and whether Imp. Act, 53-54 Vict. c. 5, s. 311. vested or contingent;
- (b) "Convey" and "conveyance," applied to any person, "Convey." "Conveyance." shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seized, or in which he is entitled to a contingent right, either for the whole estate of the person conveying or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance;
- (c) "Court" shall mean the Supreme Court; "Court."
- (d) "Land" shall include messuages, tenements, and hereditaments, corporeal and incorporeal of every tenure or description whatever may be the estate or interest therein, and whether entire or undivided; "Land."
- (e) "Lunatic" shall include an idiot and a person of unsound mind; "Lunatic."
- (f) "Lunacy" shall include idiotey and unsoundness of mind; "Lunacy."
- (g) "Mortgage" shall include every interest or property in real or personal estate which is a security for money or money's worth; "Mortgage." Imp. Act, 53-54 Vict. c. 5, s. 341.
- (h) "Possessed" shall be applicable to any vested estate less than a life estate at law or in equity, in possession or in expectancy in any land; "Possessed."

"Seized."

- (i) "Seized" shall be applicable to any vested interest for life or of a greater description, and shall extend to estates at law and in equity in possession or in futurity in any land;

Imp. Act,
54-55 Vict. c. 65,
s. 28.

"Stock."

- (j) "Stock" shall include shares and any fund, annuity or security transferable in books kept by any company or society, or by instrument of transfer alone, or by instrument of transfer accompanied by other formalities, and any share or interest therein, and also shares in ships registered under the Acts relating to Merchant Shipping;

Imp. Act,
53-54 Vict. c. 5,
s. 341.

"Trust."
"Trustee."

- (k) "Trust" and "Trustee" shall include implied and constructive trusts and cases where the trustee has some beneficial interest, and also the duties incident to the office of personal representative of a deceased person, but not the duties incident to an estate conveyed by way of mortgage. 9 Edw. VII. c. 37, s. 2.

Imp. Act,
53-54 Vict. c. 5,
s. 341.

JURISDICTION OF COURT.

Powers of the
Court.
Rev. Stat.
c. 295.

3.—(1) Subject to the provisions of *The Hospitals for the Insane Act* the Court shall have all the powers, jurisdiction and authority of His Majesty over and in relation to the persons and estates of lunatics, including the care and the commitment of the custody of lunatics and of their persons and estates.

Orders of
Court.

(2) The Court may make orders for the custody of lunatics and the management of their estates, and every such order shall take effect as to the custody of the person immediately, and as to the custody of the estate upon the completion of the committee's security. 9 Edw. VII. c. 37, s. 3.

Powers of
Judge
in Chambers.

4. The powers by this Act conferred upon the Court may be exercised by a Judge of the Supreme Court in Chambers. 9 Edw. VII. c. 37, s. 4.

Power of
master and
official referee.

5. The Court may delegate to a master, official referee or other officer all or any of the powers of the Court under this Act, except the making of a declaration of lunacy. 9 Edw. VII. c. 37, s. 5.

DECLARATION OF LUNACY.

Declaration
of lunacy.

6.—(1) The Court upon application supported by evidence, may by order declare a person a lunatic if the Court is satisfied that the evidence establishes beyond reasonable doubt that he is a lunatic.

By whom
application to
be made.

(2) The application may be made by the Attorney-General of Ontario, by any one or more of the next of kin of the

alleged lunatic, by his or her wife or husband, by a creditor or by any other person.

(3) The alleged lunatic and any person aggrieved or ^{Appeal.} affected by the order shall have the right to appeal therefrom.

(4) The practice and procedure on the appeal shall be the ^{Procedure.} same as on an appeal from an order made by a Judge of the High Court Division. 9 Edw. VII. c. 37, s. 6.

7.—(1) Where in the opinion of the Court the evidence ^{Issue to try the} does not establish beyond reasonable doubt the alleged lunacy, ^{alleged} or where for any other reason the Court deems it expedient so ^{lunacy.} to do, instead of making an order under subsection 1 of section 6, the Court may direct an issue to try the alleged lunacy.

(2) Subject to the provisions of section 8 the issue shall be ^{Method of} tried with or without a jury as the Court directing it or the ^{trial.} Judge presiding at the trial may order.

(3) The trial shall take place at such time and place as the ^{Time and} Court may direct. ^{place.}

(4) On the trial of the issue the alleged lunatic, if within ^{Production of} the jurisdiction of the Court, shall be produced, and shall be ^{lunatic.} examined at such time and in such manner, either in open Court or privately, and where the trial is with a jury before the jury retire to consider their verdict, as the presiding Judge may direct, unless the Court by the order directing the issue or the Judge presiding at the trial dispenses with the production of the lunatic or with his examination.

(5) On the trial of the issue the inquiry shall be confined ^{Scope of} to the question whether or not the person who is the subject of ^{inquiry.} the inquiry is at the time of the inquiry of unsound mind and incapable of managing himself or his affairs, and the presiding Judge shall make an order in accordance with the result of the inquiry.

(6) The practice and procedure as to the preparation, ^{Procedure.} entry for trial and trial of the issue, and all the proceedings incidental thereto, shall be the same as in the case of any other issue directed by the Court or a Judge.

(7) The alleged lunatic and any person aggrieved or ^{Appeal.} affected thereby shall have the like right to move against a verdict or to appeal from an order made upon or after the trial as may be exercised by a party to an action in the Supreme Court including the right of appeal; and the Court hearing any such motion or appeal shall have the same powers as upon a motion against a verdict or an appeal from a judgment entered at or after the trial of an action.

(8) Subject to the provisions of section 10 the order or ^{Finality.} judgment of the Court or, where the issue is tried by a jury, the verdict of the jury shall be final unless set aside upon appeal or motion under the next preceding subsection. 9 Edw. VII. c. 37, s. 7.

Right of
alleged lunatic
to have issue
tried by jury.

8. An alleged lunatic shall be entitled to demand, by notice in writing to be given to the person applying for the declaration of his lunacy, and also to be filed in the Central Office at Osgoode Hall, Toronto, at least ten days before the first day of the sittings at which the issue is directed to be tried, that any issue directed to determine the question of his lunacy shall be tried with a jury, and, unless he withdraws such demand before the trial, or the Court is satisfied by personal examination of the lunatic that he is not mentally competent to form and express a wish for a trial by jury and so declares by order, the issue shall be tried by a jury. 9 Edw. VII. c. 37, s. 8.

Examination
of alleged
lunatic.

9.—(1) For the purposes of the examination mentioned in the next preceding section, or where it is deemed proper for any other purpose, the Court may require the alleged lunatic to attend at such convenient time and place as the Court may appoint.

Order for
medical
examination.

(2) The Court may by order require an alleged lunatic to attend and submit to examination by one or more medical practitioners at such time and place as the order directs. 9 Edw. VII. c. 37, s. 9.

SUPERSEDING DECLARATION OF LUNACY.

Application to
supercede de-
claration of
lunacy.

10.—(1) Upon application at any time after the expiration of one year from the date of the order by which a person has been declared a lunatic, or sooner by leave of the Court, the Court, if satisfied that such person has become of sound mind and capable of managing his own affairs, may make an order so declaring.

Appeal.

(2) Any such order shall be subject to appeal as provided by subsections 3 and 4 of section 6. 9 Edw. VII. c. 37, s. 10 (1) (2); 1 Geo. V. c. 17, s. 42 (2).

Directing issue
as to restora-
tion to sanity.

(3) Instead of making an order under subsection 1 the Court may direct an issue to try the question of the restoration to sanity of the person so formerly declared or adjudged a lunatic.

Application of
ss. 7 and 8.

(4) Any issue so directed shall be subject to the provisions of section 7 and of section 8.

Order supersed-
ing declaration
of lunacy.

(5) Where a person formerly declared a lunatic has been found to be of sound mind and capable of managing his own affairs and the time for appealing from or moving against the order or verdict has expired, or if an appeal be taken or a motion made, when the same has been finally dismissed, an order may be issued superseding, vacating, and setting aside the order declaring the lunacy of such person for all purposes except as to acts or things done in respect of the person or estate of the lunatic while such order was in force. 9 Edw. VII. c. 37, s. 10 (3-5).

COMMITTEES OF ESTATES OF LUNATICS.

11. Where a committee of the estate of a lunatic has been appointed,

- (a) The committee shall, within six months after being appointed, file in the office of the master to whom the matter is referred, or of such officer as may be appointed for that purpose, a true inventory of the whole real and personal estate of the lunatic, stating the income and profits thereof, and setting forth the debts, credits, and effects of the lunatic, so far as the same have come to the knowledge of the committee; Inventory of present property.
- (b) If any property belonging to the estate is discovered after the filing of an inventory the committee shall file a true account of the same, from time to time, as it is discovered; Also, of after discovered property.
- (c) Every inventory and account shall be verified by the oath of the committee; Verification.
- (d) The committee shall give security with two or more sureties in double the amount of the personal estate, and of the annual rents and profits of the real estate, for duly accounting for the same once in every year, or oftener if required by the Court, for filing the inventory and for the payment into Court of the balances in his hands upon such accounting forthwith after the same shall have been ascertained or otherwise as the Court may direct; and Security to be given by the committee.
- (e) The security shall be taken by bond in the name of the Accountant of the Supreme Court, and shall be filed in his office. 9 Edw. VII. c. 37, s. 11. Form of security.

MANAGEMENT AND ADMINISTRATION.

12. The powers conferred by this Act as to the management and administration of a lunatic's estate shall be exercisable in the discretion of the Court for the maintenance or benefit of the lunatic or of his family or where it appears to be expedient, in the due course of management of the property of the lunatic. 9 Edw. VII. c. 37, s. 12. Powers of Court as to maintenance of lunatic or his family.
Imp. Act, 53-54 Vict. c. 5, s. 116 (4).

13. Nothing in this Act shall subject a lunatic's property to claims of his creditors further than the same is now subject thereto by due course of law. 9 Edw. VII. c. 37, s. 13. Rights of creditors.
Imp. Act, 53-54 Vict. c. 5, s. 116 (5).

14.—(1) The Court may order that any property of the lunatic, whether present or future, be sold, charged, mortgaged, dealt with or disposed of as may be deemed most expedient. Power to raise money for certain purposes.

dient for the purpose of raising or securing or repaying, with or without interest, money which is to be or has been applied to

- (a) payment of the lunatic's debts or engagements;
- (b) discharge of any encumbrance on his property;
- (c) payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit;
- (d) payment of or provision for the expenses of his future maintenance.

Terms of charge or mortgage.

Imp. Act, 53-54 Vict. c. 5, s. 117.

(2) Where a charge or mortgage is made under this Act for the expenses of future maintenance, the Court may direct the same to be payable either contingently if the interest charged is contingent or future, or upon the happening of the event if the interest is dependent on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as may be deemed expedient. 9 Edw. VII. c. 37, s. 14.

Charging lunatic's estate for permanent improvements

Imp. Act, 53-54 Vict. c. 5, s. 118.

15.—(1) The Court may order that the whole or any part of any moneys expended or to be expended under an order of the Court for the permanent improvement, security, or advantage of the property of the lunatic, or of any part thereof, shall, with interest, be a charge upon the improved property or any other property of the lunatic, but so that no right of sale or foreclosure during the lifetime of the lunatic be conferred by the charge.

Interest, how to be met.

(2) The interest shall be kept down during the lunatic's lifetime out of the income of his general estate, as far as the same is sufficient to bear it.

To whom charge to be made.

(3) The charge may be made either to some person advancing the money or, if the money is paid out of the lunatic's general estate, to some person as trustee for him as part of his personal estate. 9 Edw. VII. c. 37, s. 15.

Powers of Committee under order of court.

Imp. Act, 53-54 Vict. c. 5, s. 120.

16. The Court may, by order, authorize and direct the committee of the estate of a lunatic to do all or any of the following things:

- (a) sell any property belonging to the lunatic;
- (b) make exchange or partition of any property belonging to the lunatic, or in which he is interested, and give or receive any money for equality of exchange or partition;
- (c) carry on any trade or business of the lunatic;
- (d) grant leases of any property of the lunatic for building, agricultural, or other purposes;

- (e) grant leases of minerals forming part of the lunatic's property, whether the same have been already worked or not, and either with or without the surface or other land;
- (f) surrender any lease and accept a new lease;
- (g) accept a surrender of any lease and grant a new lease;
- (h) execute any power of leasing vested in a lunatic having a limited estate only in the property over which the power extends;
- (i) perform any contract relating to the property of the lunatic entered into by him before his lunacy;
- (j) surrender, assign, or otherwise dispose of with or without consideration any onerous property belonging to the lunatic;
- (k) exercise any power or give any consent required for the exercise of any power where the power is vested in the lunatic for his own benefit or the power of consent is in the nature of a beneficial interest in the lunatic; 9 Edw. VII. c. 37, s. 16;
- (l) give consent to the transfer or assignment of a lease where the consent of the lunatic to the transfer or assignment thereof is requisite. 1 Geo. V. c. 17, s. 42 (1).

17. Any property taken in exchange and any renewed lease accepted on behalf of a lunatic under the powers of this Act; shall be to the same uses and be subject to the same trusts, charges, encumbrances, dispositions, devises, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to. 9 Edw. VII. c. 37, s. 17.

Property exchanged and renewed lease to be to same uses as before.
Imp. Act, 53-54 Vict. c. 5, s. 121.

18.—(1) The power to authorize leases of a lunatic's property under this Act shall extend to property of which the lunatic is tenant in tail, and every lease granted pursuant to any order under this Act shall bind the issue of the lunatic and all persons entitled in remainder and reversion expectant upon the estate tail of the lunatic, including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the lunatic shall have the same rights and remedies against the lessee, his executors, administrators and assigns as the lunatic or his committee would have had.

Extent of leasing power.
Imp. Act, 53-54 Vict. c. 5, s. 122.

(2) Leases authorized to be granted or accepted by or on behalf of a lunatic under this Act may be for such number of lives or such term of years, at such rent and royalties, and

Term.

subject to such reservations, covenants, and conditions as the court approves.

Premiums,
etc., on
renewal.

(3) Premiums or other payments on the renewal of leases may be paid out of the lunatic's estate, or charged with interest on the leasehold property. 9 Edw. VII. c. 37, s. 18.

Nature of pro-
ceeds of sale
and mortgage.

19.—(1) The lunatic, his heirs, executors, administrators, next of kin, devisees, legatees and assigns, shall have the same interest in any money arising from any sale, mortgage or other disposition, under the powers of this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage, or disposition, if no sale, mortgage or disposition had been made, and the surplus money shall be of the same nature as the property sold, mortgaged or disposed of.

And of money
received from
certain other
sources.

(2) Money received for equality of partition and exchange, or under any lease of unopened mines, and all premiums and sums of money received upon the grant or renewal of a lease, where the property the subject of the partition, exchange or lease was land of the lunatic, shall, subject to the application thereof for any purposes authorized by this Act, as between the representatives of the real and personal estate of the lunatic, be considered as real estate, except in the case of premiums and sums of money received upon the grant or renewal of leases of property of which the lunatic was tenant for life, in which case the premiums and sums of money shall be personal estate of the lunatic.

Powers of
Court.

Imp. Act,
53-54 Vict. c. 5,
s. 123.

(3) In order to give effect to this section the Court may direct any money to be carried to a separate account, and may order such assurances and things to be executed and done as may be deemed expedient. 9 Edw. VII. c. 37, s. 19.

Power to carry
orders into
effect.

Imp. Act,
53-54 Vict. c. 5,
s. 124.

20. The committee of the estate, or such person as the Court approves, shall, in the name and on behalf of the lunatic, execute and do all such assurances and things for giving effect to any order under this Act as the Court directs, and every such assurance and thing shall be valid and effectual and shall take effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject. 9 Edw. VII. c. 37, s. 20.

Powers vested
in lunatic as
trustee or
guardian.

Imp. Act,
53-54 Vict. c. 5,
s. 128.

21. Where a power is vested in a lunatic in the character of trustee or guardian, or the consent of a lunatic to the exercise of a power is necessary in the like character, or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, the committee of the estate, in the name and on behalf of the lunatic, under an order of the Court made upon the application of any person interested, may exercise the power or give the consent in such manner as the order directs. 9 Edw. VII. c. 37, s. 21.

22. Where the Court exercises, in the name and on behalf of the lunatic, a power of appointing new trustees vested in the lunatic, the Court, where it seems to be for the lunatic's benefit and also expedient, may make any order respecting the property subject to the trust which might have been made in the same case under *The Trustee Act*, on the appointment thereunder of a new trustee or new trustees. 9 Edw. VII. c. 37, s. 22.

Exercise by court of lunatic's right to appoint trustee.

Imp. Act, 53-54 Vict. c. 5, s. 129.

Rev. Stat. c. 121.

23.—(1) Where it appears to the Court that there is reason to believe that the unsoundness of mind of any lunatic so found is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of the lunatic, or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income or of ready money belonging to the lunatic, and standing to his account with a banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and properly applied in that behalf, the Court may allow thereout such amount as may be deemed proper for the temporary maintenance of the lunatic or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and may, instead of proceeding to order a grant of the custody of the estate, order or give liberty for the payment of any such sum of money, or any part thereof, to such person as under the circumstances of the case it may be thought proper to entrust with the application thereof, and may direct the same to be paid to such person accordingly, and when received to be applied and the same shall accordingly be applied in or towards such temporary maintenance.

Provision for maintenance when disability is temporary.

(2) The receipt in writing of the person to whom payment is to be made for any money payable to him by virtue of an order under this section shall be a good discharge, and every person is hereby directed to act upon and obey every such order.

Effect of Receipt.

(3) The person receiving any money by virtue of an order under this section shall pass an account thereof when and as the Court may direct. 9 Edw. VII. c. 37, s. 23.

Liability to account.

Imp. Act, 53-54 Vict. c. 5, s. 127.

VESTING ORDERS.

24. Where any stock is standing in the name of or is vested in a lunatic beneficially entitled thereto, or is standing in the name of or vested in the committee of the estate of a lunatic so found, in trust for the lunatic, or as part of his property, and the committee dies intestate, or himself becomes a lunatic, or is out of Ontario, or it is uncertain whether the committee is living or dead, or he neglects or refuses to

Power to transfer stock.

Imp. Act, 53-54 Vict. c. 5, s. 133.

transfer the stock, or to receive or pay over the dividends thereof as directed by an order of the Court, then the Court may order some fit person to transfer the stock to or into the name of a new committee, or of the Accountant of the Supreme Court, or otherwise, and also to receive and pay over the dividends in such manner as the Court directs. 9 Edw. VII. c. 37, s. 24.

Stock in name
of lunatic out
of jurisdiction.

Imp. Act,
53-54 Vict. c. 5,
s. 134.

25. Where any stock is standing in the name of or vested in a person residing out of Ontario, the Court upon proof that he has been declared a lunatic and that his personal estate has been vested in a person appointed for the management thereof according to the law of the place where he is residing, may order some fit person to make such transfer of the stock or any part thereof to or into the name of the person so appointed or otherwise, and also to receive and pay over the dividends thereof as the Court may direct. 9 Edw. VII. c. 37, s. 25.

Power to vest
land of lunatic
trustee or
mortgagee.

26.—(1) Where a lunatic is solely or jointly seized or possessed of any land upon trust or by way of mortgage, the Court may by order vest such land in such person or persons for such estate and in such manner as the Court directs.

Or a contin-
gent right.

(2) Where a lunatic is solely or jointly entitled to a contingent right in any land upon trust or by way of mortgage the Court may by order release such land from the contingent right and dispose of the same to such person as the Court shall direct.

Effect of
order.

(3) An order made under subsections 1 and 2 shall have the same effect as if the trustee or mortgagee had been sane and had executed a deed conveying the land for the estate named in the order, or releasing or disposing of the contingent right.

Conveyance.

(4) Where an order may be made under this section the Court may, if it is more convenient, appoint a person to convey the land or release the contingent interest, and a conveyance or release by such person in conformity with the order shall have the same effect as an order under subsections 1 and 2. 9 Edw. VII. c. 37, s. 26.

Imp. Act,
53-54 Vict. c. 5,
s. 135.

Lunatic trustee
or mortgagee
of stock or
chose in action.

27.—(1) Where a lunatic is solely entitled to any stock or chose in action upon trust or by way of mortgage, the Court may by order vest in any person the right to transfer or to call for a transfer of the stock or to receive the dividends thereof, or vest in any person the chose in action, or any interest in respect thereof.

Jointly
interested.

(2) Where any person is jointly entitled with a lunatic to any stock or chose in action upon trust or by way of mortgage the Court may make an order vesting the right to transfer or to call for a transfer of the stock or to receive the dividends

thereof or vesting the chose in action or any interest in respect thereof either in such person alone or jointly with any other person.

(3) Where any stock is standing in the name of a deceased person whose personal representative is a lunatic or where a chose in action is vested in a lunatic as the personal representative of a deceased person, the Court may make an order vesting the right to transfer or to call for a transfer of the stock or to receive the dividends thereof or vesting the chose in action or any interest in respect thereof in any person whom the Court may appoint.

(4) Where an order may be made under this section the Court may if it is more convenient appoint some fit person to make or join in making the transfer. 9 Edw. VII. c. 37, s. 27.

28.—(1) The person in whom the right to transfer or to call for a transfer of any stock is vested may execute and do all powers of attorney, assurances and things to complete the transfer, according to the order, and the transfer shall be valid and effectual to all intents and purposes; and banks and other companies and their officers and all other persons shall be bound to obey every such order according to its terms.

(2) After notice in writing of an order under this Act it shall not be lawful for a bank or other company to transfer stock to which the order relates or pay any dividends except in accordance with the order. 9 Edw. VII. c. 37, s. 28.

29. This Act and every order purporting to be made under this Act shall be a full indemnity and discharge to any bank and other company and society and their respective officers and servants, and all other persons for all acts and things done or permitted to be done pursuant thereto so far as relates to any property in which a lunatic is interested either in his own right or as trustee or mortgagee, and it shall not be necessary to enquire into the propriety of any order purporting to be made under this Act relating to any such property or the jurisdiction to make the same. 9 Edw. VII. c. 37, s. 29.

30. The fact that an order made under this Act for conveying or vesting land or releasing or disposing of a contingent right has been founded on an allegation of the lunacy of a trustee or mortgagee, shall be conclusive evidence of the fact alleged in any Court upon any question as to the validity of the order; but this section shall not prevent the Court from directing a reconveyance of any land or contingent right dealt with by the order, or from directing any party to any proceeding concerning such land or right to pay any costs occasioned by the order, where the same appears to have been improperly obtained. 9 Edw. VII. c. 37, s. 30.

Order vesting
in trustees of
charities.

Imp. Act,
53-54 Vict. c. 5,
s. 138.

31. The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock or chose in action in the trustee or trustees of any charitable society or in any incorporated charitable body over which the Court would have jurisdiction upon action duly instituted, whether the appointment of such trustee or trustees was made by instrument under a power or by the Court under its general or statutory jurisdiction. 9 Edw. VII. c. 37, s. 31.

Declarations
and directions
by Court.
Imp. Act,
53-54 Vict. c. 5,
s. 139.

32. The Court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised. 9 Edw. VII. c. 37, s. 32.

Appointment
of new trustee.

Imp. Act,
53-54 Vict. c. 5,
s. 141.

33. Where the Court has jurisdiction to order a conveyance or transfer of land or stock or to make a vesting order, an order may also be made appointing a new trustee or trustees. 9 Edw. VII. c. 37, s. 33.

MISCELLANEOUS PROVISIONS.

Money in court
belonging to
lunatic in
any other part
of Canada, or
Great Britain,
or Ireland

34. Where there is money in any Court to the credit of a person who has been found or who is alleged to be a lunatic and such person is resident in Great Britain or Ireland or in any part of Canada, other than Ontario, upon production of an order made by a Superior Court exercising jurisdiction where such person is resident, authorizing any person to receive such money, the Court may make an order for payment of such money to the person designated in the order to receive the same. 9 Edw. VII. c. 37, s. 34.

Costs.

35. The Court may order the costs, charges, and expenses of and incidental to orders, issues, directions, conveyances, transfers, and all proceedings of whatever nature under this Act to be paid by any party, to the application, issue or proceeding, or out of the estate of the lunatic or alleged lunatic, or partly in one way and partly in another. 9 Edw. VII. c. 37, s. 35.

Rules.

36.—(1) The Supreme Court may make rules for carrying this Act into effect and for regulating the costs in relation thereto, and except where inconsistent with the provisions of this Act or such rules, *The Judicature Act* and Rules made thereunder shall apply to proceedings under this Act.

Rev. Stat. c. 56.

Application of
Rev. Stat. c. 65
to rules.

(2) The provisions of *The Judicature Act* as to the promulgation of rules made thereunder and the effect thereof, shall apply to rules made under the authority of this section. 9 Edw. VII. c. 37, s. 36.

APPLICATION OF ACT TO PERSONS NOT LUNATICS, BUT INCAPACITATED BY MENTAL INFIRMITY.

37.—(1) The powers and provisions of this Act relating to management and administration shall apply to every person not declared to be lunatic with regard to whom it is proved, to the satisfaction of the Court, that he is, through mental infirmity, arising from disease, age, or other cause, or by reason of habitual drunkenness or the use of drugs, incapable of managing his affairs.

Extension of Act to certain persons not declared lunatics.

(2) The provisions of this section shall apply although the person is not a lunatic.

Application of section.

(3) Such of the powers of this Act as are made exercisable by the committee of the estate under order of the Court shall be exercised in the cases provided for by subsection 1 by such person, in such manner, and with or without security, as the Court may direct, and any such order may confer upon the person therein named authority to do any specified act or exercise any specified power, or may confer a general authority to exercise on behalf of the person to whom the order relates until further order, all or any such powers without further application to the Court.

Powers of committee, how exercised and by whom.

(4) Every person appointed to do any such act or exercise any such power shall be subject to the jurisdiction and authority of the Court as if such person were the committee of the estate of a lunatic so declared.

Liability of person appointed.
Imp. Act, 53-54 Vict. c. 5, s. 116 (1) (d), (2), 54-55 Vict. c. 65, s. 27 (4).

(5) Section 12 of this Act shall apply to the cases provided for by subsection 1, and the person in respect of whom the order is made, and any person aggrieved or affected by the order shall have the like right to appeal therefrom as is provided for by section 6. 1 Geo. V. c. 20, ss. 1-5.

Application of s. 12.

CHAPTER 69.

An Act respecting Actions of Replevin.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Replevin Act*. 9 Edw VII. c. 38, s. 1.

Interpretation. **2.** In this Act,

“Sheriff.” “Sheriff” shall include any officer to whom an execution or other process is directed. 9 Edw. VII. c. 38, s. 2.

WHEN GOODS REPLEVIABLE.

When goods
may be
replevied.

3. Where goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable securities or other personal property or effects have been wrongfully distrained or have been otherwise wrongfully taken or detained, the owner or other person capable of maintaining an action for damages therefor may bring an action of replevin for the recovery thereof, and of the damages sustained by reason of such distraint, taking or detention. 9 Edw. VII. c. 38, s. 3.

Goods seized
under legal
process.

4. An action of replevin shall not be brought for the recovery of personal property seized under process by and in the custody of a sheriff, bailiff or other officer, or for the recovery of any liquor seized by a license inspector, constable or other officer under *The Liquor License Act*. 9 Edw. VII. c. 38, s. 3; 1 Geo. V. c. 17, s. 12.

Rev. Stat.
c. 215.

Power of
sheriff to
make search
under order of
replevin in
dwelling house
of defendant
or others hold-
ing for him.

5. Where a sheriff has in his hands an order of replevin, and the property to be replevied or any part thereof is reasonably supposed to be secured or concealed in any dwelling house of the defendant, or of any other person holding the same for him, and the sheriff publicly demands at the door of such dwelling house delivery of the property to be replevied, and the same is not delivered to him within six hours after such demand, he may, and shall, if necessary, but during daylight only, break open such dwelling house for the purpose of replevying such property or any part thereof, and, if found therein, shall make replevin according to the order. 9 Edw. VII. c. 38, s. 5.

6. Where the property to be replevied, or any part thereof, ^{When concealed in other enclosure.} is reasonably supposed to be secured or concealed in an enclosure other than a dwelling house of the defendant, or of another person holding the same for him, and the sheriff publicly demands at the enclosure delivery of the property to be replevied, and the same is not forthwith delivered to him, he may, and shall, if necessary, at once break open such enclosure for the purpose of replevying such property, or any part thereof, and, if found therein, shall make replevin according to the order. 9 Edw. VII. c. 38, s. 6.

7. Where the property to be replevied, or any part thereof, ^{When concealed on person, etc.} is reasonably supposed to be concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and the sheriff demands from the defendant, or such other person, delivery thereof, and delivery is neglected or refused, he may, and if necessary shall, search and examine the person, and, subject to the next two preceding sections, the premises of the defendant or other person, for the purpose of replevying the property, or any part thereof, and, if found, shall make replevin according to the order. 9 Edw. VII. c. 38, s. 7.

REPLEVIN IN COUNTY COURTS.

8. The County and District Courts shall have jurisdiction ^{Jurisdiction of County or District Courts.} in replevin as is provided in *The County Courts Act*. 10 Edw. VII. c. 26, s. 8. ^{Rev. Stat. c. 59.}

REPLEVIN IN DIVISION COURTS.

9. Where the value of the property distrained, taken or detained does not exceed \$60, and the title to land is not brought in question, the action may be brought in the Division Court for the division within which the defendant or one of the defendants resides or carries on business, or where the property was distrained, taken or detained. 9 Edw. VII. c. 38, s. 9. ^{Jurisdiction of Division Court.}

CHAPTER 70.

An Act respecting Dower.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Dower Act*. 9 Edw. VII. c. 39, s. 1.

PART I.

RIGHT TO DOWER.

Dower and
quarantine

25 Edw. I. c. 7
(Magna
Charta).

2. A widow, on the death of her husband, may tarry in his chief house for forty days after his death, within which time her dower shall be assigned her, if it has not been assigned her before, and in the meantime she shall have her reasonable maintenance; and for her dower shall be assigned to her the third part of all the lands of her husband, whereof he was seized at any time during coverture, except such thereof as he was so seized of in trust for another. 9 Edw. VII. c. 39, s. 2.

Damages for
deforcement.
20 Hen III.
(Stat. of
Merton) c. I.

3. A widow wrongfully deforced of dower or quarantine, may recover damages for such deforcement against the deforcer. 9 Edw. VII. c. 39, s. 3.

Dower out of
equitable
estates.

4. Where a husband dies beneficially entitled to any land for an interest which does not entitle his widow to dower at common law, and such interest, whether wholly equitable or partly legal and partly equitable, is, or is equal to an estate of inheritance in possession, other than an estate in joint tenancy, his widow shall be entitled to dower out of such land. 9 Edw. VII. c. 39, s. 4.

Dower where
husband had a
right of entry.

5. Where a husband has been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same, although her husband did not recover possession thereof; but such dower shall be sued for or obtained within the period during which such right of entry or action might be enforced. 9 Edw. VII. c. 39, s. 5.

WHERE NO DOWER.

Land in state
of nature.

6. Dower shall not be recoverable out of any separate and distinct lot, tract, or parcel of land which, at the time of the

alienation by the husband or at the time of his death, if he died seized thereof, was in a state of nature, and unimproved by clearing, fencing or otherwise for the purposes of cultivation or occupation; but this shall not restrict or diminish the right to have woodland assigned to the dowress under section 29, from which it shall be lawful for her to take firewood necessary for her own use, and timber for fencing the other portions of the same lot, tract or parcel assigned to her. 9 Edw. VII. c. 39, s. 6.

7. No dower shall be recoverable out of any land which has been heretofore or shall be hereafter granted by the Crown as mining land in case such land is, on or after the 31st day of December, 1897, granted or conveyed to the husband of the person claiming dower and he does not die entitled thereto. 9 Edw. VII. c. 39, s. 7.

8. Land dedicated by the owner thereof for a street or public highway shall not be subject to any claim for dower by the wife of the person by whom the same was dedicated. 9 Edw. VII. c. 39, s. 8.

9. Where a wife willingly leaves her husband and goes away, and continues with her adulterer, she shall be barred forever of her action to demand her dower that she ought to have of her husband's land, unless her husband willingly and without coercion be reconciled to her and suffer her to dwell with him; in which case she shall be restored to her action. 9 Edw. VII. c. 39, s. 9.

BAR OF DOWER.

10.—(1) No bar of dower contained in any mortgage or other instrument intended to have the effect of a mortgage or other security upon land shall operate to bar such dower to any greater extent than shall be necessary to give full effect to the rights of the mortgagee or grantee under such instrument.

(2) Where land comprised in such mortgage or other instrument is sold under any power of sale contained therein or under any legal process, the wife of the mortgagor or grantor who shall have so barred her dower in such land shall be entitled to dower in any surplus of the purchase money arising from such sale which may remain after satisfaction of the claim of the mortgagee or grantee, to the same extent as she would have been entitled to dower in the land from which such surplus purchase money shall be derived had the same not been sold and except where the mortgage or other instrument is for the purchase money of the land the amount to which she is entitled shall be calculated on the basis of the

amount realized from the sale of the land, and not upon the amount realized from the sale over and above the amount of the mortgage only. 9 Edw. VII. c. 39, s. 10.

[As to right to dower in land subject to The Land Titles Act where land acquired subject to a charge, or where owner, after charging land, marries, see R.S.O. c. 126, s. 47.]

Payment of
money into
court.

11.—(1) A mortgagee or other person holding any money out of which a married woman shall be dowable under the next preceding section may pay the same into the Supreme Court to the credit of such married woman and the other persons interested therein.

Order for
securing right
of dower.

(2) The Supreme Court or a Judge thereof may, on a summary application, make such order as may be deemed just for securing the right of dower of a married woman in any money out of which she shall be dowable. 9 Edw. VII. c. 39, s. 11.

Widow's
election.

12. A widow shall not be entitled to take her interest in money under section 10, and, in addition thereto, a share of the money as personal estate. 9 Edw. VII. c. 39, s. 12.

Where wife is
confined as
insane when
husband
acquires land.

13. Where a person whose wife is a lunatic and confined as such in a provincial hospital for the insane in Ontario, has heretofore, while his wife was so confined, become the owner of land or hereafter while she is so confined becomes the owner of land, he may sell and convey or mortgage such land, freed and discharged of any claim of his wife for dower therein, but no such conveyance or mortgage shall be made after the discharge of his wife from the hospital. 9 Edw. VII. c. 39, s. 13.

Where wife
living apart
from her
husband.

14.—(1) Where the wife of an owner of land

(a) has been living apart from him for two years under such circumstances as disentitle her to alimony;
or

(b) is a lunatic or of unsound mind and confined as such in a hospital for the insane,

and such owner is desirous of selling or mortgaging the land free from dower, a Judge of the Supreme Court, or a Judge of the county or district court of the county or district in which such owner resides, on application by him, may, by an order to be made in a summary way, upon such evidence as to the Judge may seem meet, and upon notice to be served personally unless the Judge otherwise directs, dispense with the concurrence of the wife for the purpose of barring her dower.

Order—form
and contents
of.

(2) The Judge shall, unless the wife has been so living apart from her husband under such circumstances as dis-

entitle her to dower, ascertain and state in the order the value of such dower, and shall by the order direct that the amount thereof shall remain a charge upon the land or be secured otherwise for the benefit of the wife or be paid or applied for her benefit as he may deem best.

(3) After the making of the order a conveyance or mortgage by the owner, expressed to be free from his wife's dower, shall, subject to the terms and conditions mentioned in the order, be sufficient to bar her right thereto.

Conveyance or mortgage after order.

(4) This section shall extend to any case in which an agreement for sale has been made, or a conveyance executed by the husband, and part of the purchase money retained by the purchaser on account of dower or an indemnity given against such dower, and in any such case the application may be made by any person interested in the land, the purchase money retained or the indemnity. 9 Edw. VII. c. 39, s. 14 (1-4).

When agreement for sale executed by husband or part of purchase money retained.

(5) Where the wife is an infant or a person of unsound mind notice of the application shall be served on the Official Guardian, except where such person is confined in any provincial hospital for the insane, in which case the notice shall only be served on the Inspector of Prisons and Public Charities. 1 Geo. V. c. 17, s. 70.

Where wife is an infant of unsound mind.

(6) On every such application the Judge shall be entitled to his own use to a fee of \$5, and no other fee or charge of any kind shall be payable in respect thereof, except that for filing the affidavits and papers the proper officer shall charge the same fees as for filing papers in other cases, which in the Supreme Court shall be paid in law stamps. 9 Edw. VII. c. 39, s. 14 (6).

Fee of Judge for order.

15.—(1) Where the gaol surgeon of a county or district in which a married woman, who is not confined in a hospital for the insane, resides, and another medical practitioner to be named by the Judge, each certifies, Form 1, that he has personally examined such married woman and that he is of opinion that she is insane, and a Judge of the county or district court of the county or district in which such married woman resides, or a Judge of the Supreme Court, also certifies, Form 2, that he has personally examined such married woman, and that from such examination and from the evidence adduced before him, if he thinks it expedient to hear evidence, he is of opinion that such married woman is insane, the Judge may make the like order as by the next preceding section is authorized.

Application where wife is insane but not confined in an hospital.

(2) The examination and certificates required by this section shall not be acted upon by the Judge unless all are made within a period of one month, and the application shall not be entertained unless it is made within one month after

Interval between examination and application.

the day upon which the last of such examinations took place. 9 Edw. VII. c. 39, s. 15.

Subsequent orders by judge as to other sales or mortgages.

16. Where a Judge makes an order under either of the next preceding two sections, with reference to any parcel of land, he may afterwards make orders in respect of other sales or mortgages by the husband, on the evidence adduced on the first application, and on other evidence which may satisfy him of the continued insanity of the wife. 9 Edw. VII. c. 39, s. 16.

Where wife of vendor or mortgagor has been living apart from husband for five years.

17.—(1) Where the wife of an owner of land has been living apart from her husband for five years or more, and the husband sells and conveys, or has sold and conveyed the land, or mortgages, or has mortgaged the same, the wife not having joined in the conveyance or mortgage, and the purchaser or mortgagee not having had notice that the grantor or mortgagor had a wife living at the time, such purchaser or mortgagee may during the lifetime of the grantor or mortgagor apply to a Judge of the Supreme Court or to a Judge of the county or district court of the county or district in which he resides for an order enabling him to convey or mortgage the land free from the dower of such wife, which may be obtained subject to the like conditions, and by the like proceedings, as are provided by section 14.

Relief of persons claiming under grantee or mortgagee.

(2) A person claiming under the grantee or mortgagee shall be entitled to apply in like manner and obtain like relief founded on the right which such grantee or mortgagee had, or on the applicant's own interest having been acquired by purchase for value in good faith without notice that such owner had a wife at the time of the conveyance or mortgage. 9 Edw. VII. c. 39, s. 17.

Registration of order.

18.—(1) An order under any of the preceding sections may be made in duplicate, or in as many parts as are necessary, and shall be signed by the Judge, and may be registered in the registry office of the registry division wherein the land to which the same relates is situate, upon its production and deposit, without any proof thereof; and such registration may take place either before or after the execution of the conveyance or mortgage made in pursuance of such order.

Order may be indorsed on deed.

(2) The order may be indorsed or written upon the conveyance or mortgage, in which case it shall be registered as part thereof.

Fee for registration of order.

(3) For the registration of the order, including all necessary entries and certificates, the registrar shall be entitled to a fee of \$1, unless the order is indorsed or written upon the conveyance or mortgage, in which case no fee shall be payable in respect of the registration thereof.

(4) If the order is indorsed or written upon the conveyance or mortgage the land may be described in the order by reference to the description contained in the conveyance or mortgage. 9 Edw. VII. c. 39, s. 18.

Description of land in order when order indorsed on deed.

19.—(1) No action of dower shall lie where the dowress has joined in a deed to convey the land, or to release her dower therein, to a purchaser for value, though the acknowledgment required by law at the time may not have been made or taken, or though there may have been an informality in the making, taking or certifying such acknowledgment.

Case where action not maintainable.

(2) Nor shall an action of dower lie where a husband, before the 2nd day of March, 1877, duly conveyed land of which he was owner, and his wife before that day executed a deed or conveyance for the purpose of barring her dower, notwithstanding her husband was not a party to such deed or conveyance, and the deed or conveyance shall be taken and adjudged to be valid and effectual to have barred her dower in the land in which such deed or conveyance professed to bar dower, notwithstanding the absence or want of a certificate touching her consent to be barred of her dower, and notwithstanding any irregularity, informality or defect in the certificate, if any, and notwithstanding that such deed or conveyance may not have been executed, acknowledged or certified, as required by any Act on or before such day in force, respecting the barring of dower. 9 Edw. VII. c. 39, s. 19.

Deeds barring dower before 2nd March, 1877, confirmed.

20. Where a wife has joined or hereafter joins in a conveyance or mortgage purporting to convey or mortgage land, or has signed or signs, otherwise than as a witness, a conveyance or mortgage by which her husband conveys or mortgages or purports to convey or mortgage land, but the conveyance or mortgage contains no words purporting to release her dower or other estate or interest in the land, the conveyance or mortgage shall have the same effect as if it contained a bar of dower by the wife and she thereby barred her dower in the land, but as to conveyances and mortgages executed before the 16th day of April, 1895, this section shall not be construed as prejudicing or affecting the rights of third persons claiming the land or some interest therein under a subsequent conveyance or mortgage executed by the wife before the 16th day of April, 1895, containing a conveyance or release of her dower or other estate or interest. 9 Edw. VII. c. 39, s. 20.

Wife joining in deed without releasing dower.

Deeds executed before 16th April, 1895.

[For right of married women to convey or release dower, see R.S.O. c. 150.]

PART II.

ASSIGNMENT OF DOWER.

By deed of
assignment.

21. The dowress and the tenant of the freehold may, by an instrument under their hands and seals, executed in the presence of two witnesses, agree upon the assignment of dower, or upon a yearly or gross sum of money to be paid in lieu and satisfaction of dower, and the instrument may be registered in the proper registry office by filing the same or a duplicate thereof, verified by the affidavit of one of the subscribing witnesses, and shall entitle the dowress to hold the land so assigned to her against the assignor and all parties claiming through or under him, as tenant for her life, or to distrain for, or to sue for, and recover in any court of competent jurisdiction the yearly or gross sum agreed to be paid to her by the tenant of the freehold; and the instrument so registered shall be a lien upon the land for such yearly or gross sum, and shall be a bar to any action or proceeding by the dowress for dower in the lands mentioned therein. 9 Edw. VII. c. 39, s. 21.

Duty of
tenant in
possession,
not also tenant
of freehold
to notify
landlord.

Penalty.

22. Every tenant in possession, who is not also tenant of the freehold, and who is served with a writ of summons in an action for the recovery of dower shall forthwith give notice thereof to his landlord or other person under whom he entered into possession, under the penalty of forfeiting the value of three years' improved rent of the premises in the possession of the tenant, to the person under whom he entered into possession, to be recovered by action in the Supreme Court. 9 Edw. VII. c. 39, s. 22.

Mode of esti-
mating dam-
ages for
detention of
dower, etc.

23. In estimating damages for the detention of dower or the yearly value of the land, for the purpose of fixing a yearly sum of money in lieu of an assignment of dower by metes and bounds, the value of permanent improvements made after the alienation of the land by the husband, or after the death of the husband, shall not be taken into account; but the damages or yearly value shall be estimated upon the state of the property at the time of such alienation or death, allowing for the general rise, if any, in the price and value of land in the particular locality. 9 Edw. VII. c. 39, s. 23.

ASSIGNMENT OF DOWER AFTER JUDGMENT.

Appointment
of Com-
missioners to
admeasure the
dower, etc.

24. The sheriff, on receipt of the writ of assignment of dower, shall, by writing under his seal of office, appoint two resident freeholders of his county who are rated upon the assessment roll for real estate of a value not less than \$2,000 each, and each of whom would in other respects be eligible to serve as a juror between the parties named in the writ, and an Ontario Land Surveyor to be commissioners to ad-

measure the dower, and the sheriff shall, in such writing, set out a copy of the writ, and shall name therein a day on or before which the commissioners shall make and return to him a report of their proceedings and determination in the execution of the duty assigned to them. 9 Edw. VII. c. 39, s. 24.

25. In case of the death or refusal to act of any or all of the commissioners so appointed, the sheriff shall, from time to time, in like manner, appoint another or others to perform the duty of any who may die or refuse to act. 9 Edw. VII. c. 39, s. 25. Provision in case of death, etc., of Commissioners.

26.—(1) Every commissioner so appointed shall, before entering upon the execution of his duty, take and subscribe an affidavit in the form following: Oath of Commissioners.

"I, _____, do swear that I am not of kin to the plaintiff (*naming her*) or to the defendant (*naming him*), or in any way interested in the land out of which the assignment of dower is to be made by me, and that I will honestly, impartially, and to the best of my skill and ability, execute and perform the duties imposed upon me by the appointment of _____ Esquire, Sheriff of the County of _____, as a Commissioner for the admeasurement of dower between the plaintiff and the defendant according to law." Form of oath.

(2) The commissioners shall annex to their report the affidavits sworn by them, and return them to the sheriff. 9 Edw. VII. c. 39, s. 26. Return to Sheriff.

27. After taking and subscribing such affidavit, the commissioners shall, for all purposes in the fulfilment of the duties by law required of them, be considered officers of the court, and shall be entitled to the same immunities and protection and be subject to the same liabilities and proceedings as a sheriff in the discharge of his duty. 9 Edw. VII. c. 39, s. 27. Powers and liabilities of Commissioners.

28.—(1) If either party desires to produce a witness before the commissioners, such party may sue out a subpoena *ad testificandum* or *duces tecum* from the office in which the action was commenced, commanding the attendance of such witness at the time and place appointed by the commissioners. Mode of procuring attendance of witnesses before Commissioners.

(2) The person so required to attend shall be entitled to be paid the same fees, allowances, and conduct money as if he had been subpoenaed as a witness in an ordinary action. 9 Edw. VII. c. 39, s. 28. Payment of witness.

29.—(1) It shall be the duty of the commissioners: Duties of commissioners.

(a) to admeasure, designate and lay off without delay, by sufficient marks, descriptions, boundaries or monuments, one-third of the land mentioned in the writ, according to the nature of the land, whether Admeasurement.

meadow, arable, pasture or woodland, being a part of the land mentioned in the writ, and having always due regard to the nature and character of the buildings and erections on such land;

Ascertainment of improvements.

- (b) to ascertain and determine what permanent improvements have been made upon the land since the death of the plaintiff's husband, or since he alienated the same to a purchaser for value, and if it can be done they shall award the dower out of such part of the land as does not embrace or contain such permanent improvements; but if that cannot be done, they shall deduct either in quantity or value from the portion to be by them allotted or assigned to the plaintiff in proportion to the benefit she may or will derive from the assignment to her as part of her dower of any part of such permanent improvements.

Assessment of yearly sum in lieu of dower.

- (2) If from peculiar circumstances, such as there being a mill or manufactory upon the land, the commissioners cannot make a fair and just assignment of dower by metes and bounds, they shall assess a yearly sum of money, being as near as may be one-third of the clear yearly rents of the premises, after deducting any rates or assessments payable thereon, and in assessing such yearly sum they shall make allowances and deductions for permanent improvements, as above provided for, and in their report to the sheriff they shall state the amount of such yearly sum and set forth all the evidence taken by them in relation to the same.

Evidence on oath.

- (3) The evidence shall be taken upon oath, which oath any one of the commissioners is hereby authorized to administer and shall be reduced to writing and subscribed by the witness.

Recovery of sum assessed.

- (4) Such yearly sum shall be a lien upon the land mentioned in the writ or upon such specific portion thereof as the commissioners may direct, and the same shall be recoverable by distress as for rent or by action against the tenant of the freehold for the time being.

Report of Commissioners.

- (5) The report of the commissioners shall be in writing, subscribed by them and directed to the sheriff, and shall contain a full statement of their proceedings, and, where the dower is assigned by metes and bounds, shall distinctly point out and describe the same, and the posts, stones or other monuments designating the boundaries, and for the purpose of planting and marking the posts, stones or monuments, the commissioners may, if necessary, employ chain-bearers and labourers. 9 Edw. VII. c. 39, s. 29.

Time for report.

30. The sheriff may, in his discretion, upon the request of the commissioners, enlarge the time for making their

report for not more than ten days, and he shall, within twenty-four hours after the receipt thereof, endorse thereon the day and hour of the receipt, and he shall then forthwith return the writ, together with the report and all papers annexed thereto, to the office wherein the action was commenced. 9 Edw. VII. c. 39, s. 30.

Return of writ
with report.

31.—(1) Either party, within a month from the filing of Appeal the sheriff's return to the writ, or within such further time as the Supreme Court or a Judge thereof may allow, may appeal from the report of the commissioners to a Judge in court, upon grounds apparent on the report and papers filed therewith, or may apply to set aside the same, upon other grounds verified by affidavit and set forth in the notice served.

(2) The Judge may vary or amend the report, or refer the same back to the commissioners for amendment in whole or in part, with such directions as to law or fact as he may deem proper, or he may confirm or set aside the report and may appoint three new commissioners or direct that the sheriff shall do so, and the new commissioners shall have the same powers and perform the same duties as hereinbefore expressed, and the report of the new commissioners shall be treated as if no other report had been made, and shall be dealt with and proceeded upon accordingly.

Order of Court
thereon.

(3) If the report is moved against upon the ground of misconduct or fraud on the part of the commissioners, the Judge may direct that they be added as parties to the proceeding, and if wilful misconduct or fraud be established the report may be set aside and the commissioners may be adjudged to pay to the parties injured all the costs which have been incurred in respect of proceedings rendered useless by such misconduct or fraud, and all the costs of the proceeding to set aside the report.

Effect of
report being
appealed from
for miscon-
duct, etc.

(4) The appeal or application may be dismissed with or without costs, and the Court may order the party at whose instance, or on whose complaint, the commissioners may have been made parties to pay the commissioners their costs.

Costs of
appeal.

(5) If the appeal or application is dismissed, or if the report is not appealed from or moved against within the proper time, the report shall thenceforth be final and conclusive on all parties to the action of dower, and a copy of the report, certified by the Registrar under the seal of the Court, may be registered in the proper registry office. 9 Edw. VII. c. 39, s. 31.

Registration
of copy of
report.

32. After such registration the plaintiff shall be entitled to sue out a writ directed to the proper sheriff, commanding him to put her into possession of the land assigned to

When writ of
possession may
issue.

her for her dower, and to levy all such costs as have been awarded to her against the defendant. 9 Edw. VII. c. 39, s. 32.

Commissioners' fees.

33. The commissioners shall each be entitled to receive from the plaintiff the sum of \$5 for each day's attendance, not exceeding two, and the sum of twenty cents for every hundred words for drawing up their report, and may also charge ten cents for every hundred words of each copy furnished by them to either party. 9 Edw. VII. c. 39, s. 33.

By whom costs to be paid.

34. The plaintiff shall pay the costs of suing out, and the costs of the commissioners in executing the writ of assignment of dower and making their report, but each party shall pay his own costs of witnesses and of his counsel or solicitor attending before the commissioners. 9 Edw. VII. c. 39, s. 34.

FORM 1.

(Section 15.)

CERTIFICATE OF MEDICAL PRACTITIONER.

I, the undersigned a legally qualified Medical Practitioner, Gaol Surgeon of the Gaol of the County (or District) of (or as the case may be) residing and practising at in the County (or District) of do hereby certify that on the day of 19, at in the County (or District) of I separately from any other Medical Practitioner, personally examined A. B. of the Township of in the County (or District) of wife of C. B., of the Township of in the County (or District) of and I further certify that the said A. B. is insane and that I have formed this opinion upon the following grounds, namely: (*here state the facts upon which the Certificate is based*).

Signed this
19, at

day of
in the County of

Witness

9 Edw. VII. c. 39, Form 1.

FORM 2.

(Section 15.)

CERTIFICATE OF JUDGE.

Province of Ontario, }
County (or District) of }
Judge of the County (or District) Court of the County (or District)
of do hereby certify that on the
day of 19 , I personally examined A.B., of the
 of in the County (or District
of wife of C.B., of the of in the County
(or District) of and that from such personal examination
(and from the evidence of G.H. and J.K. adduced before me, *(if
evidence has been taken)* I am of opinion that the said A.B. is
insane.

Signed this day of 19 , at
in the County (or District) of

9 Edw. VII. c. 39, Form 2.

CHAPTER 71.

An Act respecting Actions for Libel and Slander.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. 1. This Act may be cited as *The Libel and Slander Act*. 9 Edw. VII. c. 40, s. 1.

Interpretation. 2. In this Act "newspaper" shall mean a paper containing public news, intelligence, or occurrences, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers, and shall include a paper printed in order to be made public weekly or oftener, or at intervals not exceeding thirty-one days, and containing only, or principally, advertisements. 9 Edw. VII. c. 40, s. 2.

LIBEL AND SLANDER.

Averments in actions for libel or slander. 3. In an action for libel or slander the plaintiff may aver that the words or matter complained of were used in a defamatory sense, specifying the defamatory sense without any prefatory averment to show how the words or matter were used in that sense, and the averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the statement of claim shall be sufficient. 9 Edw. VII. c. 40, s. 3.

Apology in mitigation of damages. 4. In an action for libel or slander where the defendant has pleaded a denial of the alleged libel or slander only, or has suffered judgment by default, or judgment has been given against him on motion for judgment on the pleadings, he may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for such libel or slander before the commencement of the action; or, if the action was commenced before there was an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity. 9 Edw. VII. c. 40, s. 4.

LIBEL.

General verdict.

5. On the trial of an action for libel the jury may give a general verdict upon the whole matter in issue in the action,

and shall not be required or directed to find for the plaintiff, merely on proof of publication by the defendant of the alleged libel, and of the sense ascribed to it in the action; but the Court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases; and the jury may on such issue find a special verdict, if they think fit so to do, and the proceedings after verdict, whether general or special, shall be the same as in other cases. 9 Edw. VII. c. 40, s. 5.

6.—(1) The Court or a Judge, upon an application by two or more defendants in any two or more actions for the same libel, or substantially the same libel, or for a libel or libels contained in articles the same or substantially the same published in different newspapers, brought by one and the same person, may make an order for the consolidation of such actions so that they shall be tried together; and after such order has been made, and before the trial of such actions, the defendants in any new actions instituted in respect of any such libel or libels shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

(2) In a consolidated action under this section the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury find a verdict against the defendant or defendants in more than one of the actions so consolidated they shall apportion the amount of the damages between and against such last mentioned defendants; and the Judge at the trial, in the event of the plaintiff being awarded the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of the costs between and against such defendants.

(3) For the purposes of this section "article" shall include anything appearing in a newspaper as an editorial or correspondence or otherwise than as an advertisement. 9 Edw. VII. c. 40, s. 6.

NEWSPAPER LIBEL.

7. In an action for libel contained in a newspaper, the defendant may plead in mitigation of damages that the libel was inserted therein without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper a full apology for the libel; or if the newspaper in which the libel appeared is one ordinarily published at intervals exceeding one week, that he offered to publish the apology in any newspaper to be selected by the plaintiff. 9 Edw. VII. c. 40, s. 7.

Notice of
action.

8.—(1) No action for libel contained in a newspaper shall lie unless the plaintiff has, within six weeks after the publication thereof has come to his notice or knowledge, given to the defendant notice in writing, specifying the statement complained of, which shall be served in the same manner as a statement of claim or by delivering the notice to a grown up person at the place of business of the defendant.

When plaintiff
to recover
actual dam-
ages only.

(2) The plaintiff shall recover only actual damages if it appears on the trial

- (a) that the alleged libel was published in good faith,
- (b) that there was reasonable ground to believe that the publication thereof was for the public benefit,
- (c) that it did not involve a criminal charge,
- (d) that the publication took place in mistake or misapprehension of the facts, and,
- (e) that a full and fair retraction of any statement therein alleged to be erroneous was published either in the next regular issue of the newspaper, or in any regular issue thereof published within three days after the receipt of such notice, and was so published in as conspicuous a place and type as was the alleged libel.

Case of
candidate for
public office.

(3) The provisions of this section shall not apply to the case of a libel against any candidate for public office in Ontario, unless the retraction of the charge is made editorially in a conspicuous manner, at least five days before the election. 9 Edw. VII. c. 40, s. 8.

Payment
into Court.

9. A defendant may pay into court, with his defence, a sum of money by way of amends for the injury sustained by the publication of any libel to which the two next preceding sections apply, and, except so far as regards the additional facts hereinbefore required to be pleaded by a defendant, such payment shall have the same effect as payment into court in other cases. 9 Edw. VII. c. 40, s. 9.

Privileged
publications.

10.—(1) A fair and accurate report published in a newspaper of any proceedings in the Senate or House of Commons of Canada, in any Legislative Assembly of any of the Provinces of Canada, or in any Committee of any of such bodies or of a public meeting, or, except where neither the public nor any newspaper reporter is admitted, of any meeting of a municipal council, school board, board of education, Provincial Board of Health, local board of health, or of any other board or local authority formed or constituted under any of the provisions of any Public Act of any of the Provinces of Canada or of the Parliament of Canada, or of any Committee appointed by any of the above-mentioned bodies, and the publication of the whole, or a

portion or a fair synopsis, of any report, bulletin, notice or other document, issued for the information of the public from any Government Office or Department, or by any Provincial Board of Health, Chief Officer of Health, medical officer of health, or local board of health, or the publication, at the request of any Government or municipal official, commissioner of police, or chief constable, of any notice or report issued by him for the information of the public, shall be privileged, unless it shall be proved that such publication was made maliciously.

(2) Nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter. Improper matter

(3) The protection intended to be afforded by this section shall not be available as a defence in any proceeding if the plaintiff shows that the defendant has refused to insert in the newspaper making such publication a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff. When defendant refuses to publish explanation.

(4) Nothing in this section shall limit or abridge any privilege now by law existing, or protect the publication of any matter not of public concern or the publication of which is not for the public benefit. Saving.

(5) For the purposes of this section "public meeting" shall mean a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance of discussion of any matter of public concern whether the admission thereto be general or restricted. 9 Edw. VII. c. 40, s. 10. Meaning of "public meeting." Or Imp. 51-52 V. c. 64, s. 4.

11.—(1) A fair and accurate report without comment in a newspaper of proceedings publicly heard before a court of justice if published contemporaneously with such proceedings shall be absolutely privileged, unless the defendant has refused or neglected to insert in the newspaper in which the report complained of appeared a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff. Report of proceedings in Courts.

(2) Nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter. 9 Edw. VII. c. 40, s. 11. Improper matter. Imp. 51-52, V. c. 64, s. 4.

12.—(1) In an action for libel contained in a newspaper the defendant may, at any time after the delivery of the statement of claim, or the expiry of the time within which it should have been delivered, apply to the Court or a Judge for security for costs, upon notice and an affidavit by the defendant, or his agent, showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case a judgment is given in favour of the defendant, that the defendant has a good defence upon the merits, and that the statements complained of were published in good faith, or that the Security for costs.

grounds of action are trivial or frivolous; and the Court or Judge may make an order that the plaintiff shall give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order shall be a stay of proceedings until the security is given.

Where libel involves a criminal charge.

(2) Where the alleged libel involves a criminal charge the defendant shall not be entitled to security for costs under this Act, unless he satisfies the Court or Judge that the action is trivial or frivolous, or that the circumstances which under section 8 entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstance that the article complained of involves a criminal charge.

Examination of parties.

(3) For the purposes of this section the plaintiff or the defendant or their agents may be examined upon oath at any time after the delivery of the statement of claim.

When order of Judge respecting security final.

(4) An order made under this section by a Judge of the Supreme Court shall be final and shall not be subject to appeal, but where the order is made by a Local Judge an appeal therefrom shall lie to a Judge of the Supreme Court sitting in Chambers, whose order shall be final and shall not be subject to appeal. 9 Edw. VII. c. 40, s. 12.

Place of trial.

13. An action for libel contained in a newspaper shall be tried in the county where the chief office of such newspaper is, or in the county wherein the plaintiff resides at the time the action is brought; but upon the application of either party the Court or a Judge may direct the action to be tried, or the damages to be assessed, in any other county if it appears to be in the interests of justice, or that it will promote a fair trial, and may impose such terms as to the payment of witness fees, and otherwise as may seem proper. 9 Edw. VII. c. 40, s. 13.

Limitation of actions.

14. An action for libel contained in a newspaper shall be commenced within three months after the publication thereof has come to the notice or knowledge of the person defamed; but where an action is brought and is maintainable for a libel published within that period the same may include a claim for any other libel published against the plaintiff by the defendant in the same newspaper within a period of one year before the commencement of the action. 9 Edw. VII. c. 40, s. 14.

Joinder.

Publication of name of publisher and address.

15.—(1) No defendant shall be entitled to the benefit of sections 8 and 14 of this Act unless the name of the proprietor and publisher and address of publication are stated either at the head of the editorials or on the front page of the newspaper.

Copy of newspaper to be *prima facie* evidence.

(2) The production of a printed copy of a newspaper shall be *prima facie* evidence of the publication of the printed

copy, and of the truth of the statements mentioned in subsection 1. 9 Edw. VII. c. 40, s. 15.

16. Service of any notice under this Act and of the writ of summons may be made upon the proprietor or publisher of the newspaper by serving the same upon any grown up person at such address. 9 Edw. VII. c. 40, s. 16.

Service of notices and of writ.

17. In an action for libel contained in a newspaper, the defendant may prove in mitigation of damages that the plaintiff has already brought actions for, or has recovered damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as that for which such action is brought. 9 Edw. VII. c. 40, s. 17.

Evidence in mitigation of damages.

18. Subsection 1 of section 8 and section 14 shall only apply to newspapers printed and published in Ontario. 9 Edw. VII. c. 40, s. 18.

Application of sec. 8, subs. 1 and s. 14.

SLANDER OF WOMEN.

19.—(1) In an action for slander for defamatory words spoken of a woman imputing unchastity or adultery, it shall not be necessary to allege in the plaintiff's statement of claim, or to prove that special damage resulted to the plaintiff from the utterance of such words, and the plaintiff may recover nominal damages without averment or proof of special damage, but shall not be entitled to recover more than nominal damages unless special damage is proved.

Proof of special damage not required in certain cases.

(2) The defendant may, at any time after the delivery of the statement of claim, apply to the Court or a Judge for security for costs, upon notice and an affidavit showing the nature of the action, and that the plaintiff is not possessed of property sufficient to answer the costs of the action if a verdict or judgment is given in favour of the defendant, and that the defendant has a good defence on the merits, or that the grounds of action are trivial or frivolous; and the Court or Judge may make an order that the plaintiff shall give security for the costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order shall be a stay of proceedings until the security is given.

Security for costs.

(3) For the purposes of subsection 2 the plaintiff or the defendant may be examined upon oath at any time after the delivery of the statement of claim. 9 Edw. VII. c. 40, s. 19.

Examination of parties.

CHAPTER 72.

An Act respecting the Action for Seduction.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. 1. This Act may be cited as *The Seduction Act*. 9 Edw. VII. c. 41, s. 1.

When action maintainable by father or mother. 2. The father or, in case of his death, the mother, whether she remains a widow or has married again, of an unmarried female who has been seduced, and for whose seduction the father or mother could maintain an action if such unmarried female was at the time dwelling under his or her protection, may maintain an action for the seduction, notwithstanding that such unmarried female was, at the time of her seduction serving or residing with another person upon hire or otherwise. 9 Edw. VII. c. 41, s. 2.

Proof of service dispensed with. 3. Upon the trial of an action for seduction brought by the father or mother it shall not be necessary to prove any act of service performed by the person seduced, but the same shall in all cases be presumed, and no evidence shall be received to the contrary; but if the father or mother of the person seduced had, before the seduction, abandoned her and refused to provide for and retain her as an inmate of his or her home, then any other person who might at common law have maintained an action for the seduction may maintain such action. 9 Edw. VII. c. 41, s. 3.

Where father or mother not resident in Ontario. 4. Any person, other than the father or mother, who by reason of the relation of master, or otherwise, would have been entitled at common law to maintain an action for the seduction of an unmarried female, may still maintain such action, if the father or mother be not resident in Ontario at the time of the birth of the child which is born in consequence of the seduction, or being resident therein does not bring an action for the seduction within six months from the birth of the child. 9 Edw. VII. c. 41, s. 4.

Who may maintain action in case of infant orphan. 5. If the father and mother of an unmarried female who has been seduced are both dead, and such unmarried female is under the age of twenty one, any person who, at the time of the birth of the child which is born in consequence of the

seduction, was the legal guardian of, or stood *in loco parentis* to such unmarried female may maintain an action for the seduction, notwithstanding that such unmarried female was, at the time of her seduction, serving or residing with another person upon hire or otherwise. 9 Edw. VII. c. 41, s. 5.

CHAPTER 73.

An Act respecting the Administration by the Crown of Estates of Intestates.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Crown Administration of Estates Act*. 9 Edw. VII. c. 42, s. 1.

When administration may issue to the Attorney-General. **2.** Where the Lieutenant-Governor, by a warrant under his privy seal, directs the Attorney-General of Ontario to obtain letters of administration general or limited of the estate of any person dying intestate, or intestate as to some part of his estate, where, in respect of the interest of His Majesty, the administration may be rightfully granted to His nominee, any competent court, upon application, in pursuance of the warrant, may grant administration to the Attorney-General for the use and benefit of His Majesty. 9 Edw. VII. c. 42, s. 2.

Administration where intestate leaves no known relatives within Ontario. **3.** Where any person dies in Ontario intestate as aforesaid, and without leaving any known relative living within Ontario, or any known relative who can be readily communicated with, living elsewhere, the Lieutenant-Governor may by warrant under his privy seal direct the Attorney-General to obtain letters of administration, general or limited, of the estate of such person; and any competent court upon application in pursuance of the warrant may grant administration to the Attorney-General for the use and benefit of His Majesty or of such persons as may ultimately appear to be entitled thereto. 9 Edw. VII. c. 42, s. 3.

Devolution of rights and liabilities of the Attorney-General as administrator. **4.** The administration so granted, and the office of administrator under the grant, with all the estates, rights, duties and liabilities of such administrator, shall, upon the death, resignation or removal of the Attorney-General, for the time being, devolve upon and become vested and continue in the succeeding Attorney-General by virtue of his appointment, and so in perpetual succession without any further grant of administration or any assignment or transfer of the estates of the administrator; and all actions and other proceedings by or against the Attorney-General for the time being as such administrator at the time of his death, resignation or removal, shall continue, and may be proceeded with by, in favour of, and against the succeeding Attorney-General; saving always

the effect of every limitation in duration or otherwise under the terms of the grant of such administration, and saving to every court having jurisdiction in this behalf all such right and authority to revoke or repeal such administration as the court would have had during the continuance of a like administration granted to a nominee of His Majesty if this Act had not been passed. 9 Edw. VII. c. 42, s. 4.

5. It shall not be necessary for the Attorney-General to give security for the due administration of the estate, but he shall have all the rights and powers of and be subject to all the liabilities and duties imposed on an administrator. 9 Edw. VII. c. 42, s. 5.

Exception.
Security dispensed with.

Liability of Attorney-General.

6. Where administration is granted to the Attorney-General the Lieutenant-Governor in Council may direct the sale, by auction or private sale, of any real estate or interest therein in Ontario to which the intestate died entitled; and the Attorney-General shall thereupon be authorized to sell in accordance with the directions of the Order in Council the whole, or any part of such real estate or interest, and to convey the same to the purchaser; and every conveyance by the Attorney-General shall be as valid and effectual as if the deceased were alive at the time of the making thereof and had executed the same. 9 Edw. VII. c. 42, s. 6.

Power to sell the real estate of the intestate.

7. Where subsequently to the grant of administration it is alleged or ascertained that the deceased has relatives or did not die intestate, the Attorney-General, subject to the direction of the Lieutenant-Governor in Council, may exercise all or any of the powers by this Act conferred until some person is appointed by a court of competent jurisdiction to deal with the estate of the deceased; and notwithstanding such appointment, any sale made in pursuance of this Act may be completed by the execution by the Attorney-General of a conveyance; and until the revocation of the letters granted, the Attorney-General may exercise fully all the powers vested in him as administrator. 9 Edw. VII. c. 42, s. 7.

Rights of relations after the issue of administration.

8. Where administration is granted under the provisions of this Act, the Attorney-General may apply to the Supreme Court for an order for the making of such inquiries as may be necessary to determine whether or not His Majesty is entitled to any portion of the estate of the deceased by reason of the deceased having died intestate and without heirs or next of kin, or otherwise; and any judgment pronounced upon such inquiry shall, unless reversed on appeal, be final and conclusive. 9 Edw. VII. c. 42, s. 8.

Inquiry as to the rights of His Majesty.

9. Where a person dies in possession of or entitled to real estate in Ontario intestate as to such real estate without any known heirs the Attorney-General without obtaining letters of administration may bring an action, either in his own

Recovery by Crown of real estate of persons dying intestate and without heirs.

name, on behalf of His Majesty, or in the name of His Majesty, to recover possession of such real estate and shall be entitled to judgment and to recover possession, unless the person claiming adversely shows that the deceased did not die intestate as to such real estate, or that he left heirs, or that he or some other person is entitled to such real estate. 9 Edw. VII. c. 42, s. 9.

Application by Attorney-General to compel an account by administrator in certain cases.

10. Where a person has died or dies intestate in Ontario and administration has been or may be hereafter granted to some person not one of the next of kin, and it is doubtful whether the intestate left any next of kin him surviving, or there are no known next of kin resident in Ontario, the Attorney-General may apply to the Supreme Court for an order requiring the administrator to account for his dealings with the estate, and may question in such proceedings the validity of any release or settlement with any alleged next of kin, and any competent court may revoke such administration, and grant administration to the Attorney-General. 9 Edw. VII. c. 42, s. 10.

Disposition of moneys.

11. Money realized from estates to which the Attorney-General is administrator under this Act or which he has recovered under section 9, shall be kept in a separate account in such bank or invested in such manner as the Lieutenant-Governor in Council may appoint, and all such money which has been unclaimed for ten years shall be paid into the Consolidated Revenue Fund. 9 Edw. VII. c. 42, s. 11.

Interest on money claimed.

12. Any person proving title to such money shall be entitled to receive the same with interest at such rate as the Lieutenant-Governor in Council may direct. 9 Edw. VII. c. 42, s. 12.

Remedy of persons having claims upon the estate.

13. Any person claiming to be entitled to any such estate or to any interest therein or to any part of the proceeds thereof may apply to the Supreme Court for a judgment or order declaring his rights in respect thereto; and the Court may direct such inquiries as may be necessary to determine the same, and may finally adjudicate thereon; but no application under this section shall be entertained unless security for costs is given by the applicant if the Attorney-General demands the same. 9 Edw. VII. c. 42, s. 13.

Right of Attorney-General to disbursements.

14. The Attorney-General may deduct from the money received on account of any estate all disbursements made by him in respect to inquiries which he may have made before taking out letters of administration, as well as disbursements otherwise made by him in respect to the estate. 9 Edw. VII. c. 42, s. 14.

15.—(1) After having given the notice provided for by *The Trustee Act*, and notwithstanding that the ten years limited by section 11 of this Act have not elapsed, the Attorney-General may pay any money remaining in his hands unclaimed into the Consolidated Revenue Fund, or may pay the same or any part thereof, or assign any personal property remaining in his hands, in accordance with any direction of the Lieutenant-Governor in Council, made under section 6 of *The Escheats Act*.

Distribution of assets by Attorney-General after notice.

Rev. Stat. c. 121.

Rev. Stat. c. 104.

(2) In such case no claim shall be maintained against His Majesty or this Province in respect of any money or personal property paid over or assigned to any person under section 6 of *The Escheats Act*, or under this Act; but this shall not prejudice the right of a creditor or claimant to follow such money, property or proceeds into the hands of the person who may have received the same under the authority of an Order in Council. 9 Edw. VII. c. 42, s. 15.

Non-liability of His Majesty and the Province.

Right to follow property not affected.

(See also *The Escheats Act*, R.S.O. c. 104.)

CHAPTER 74.

An Act relating to Leases, Sales and Mortgages of Settled Estates.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Settled Estates Act*. 3-4 Geo. V. c. 20, s. 1.

Interpretation.

2.—(1) In this Act,

"Court."

(a) "Court" shall mean the Supreme Court.

"Income."

(b) "Income" shall include rents and profits.

"Land."

(c) "Land" shall include incorporeal hereditaments, also an undivided share in land.

"Possession."

(d) "Possession" shall include receipt of income.

"Settled estates."

(e) "Settled estate" shall mean land and all estates or interests in land which are the subject of a settlement.

"Settlement."

(f) "Settlement" shall mean a statute, deed, agreement, will or other instrument, or any number of such instruments, under or by virtue of which land or any estate or interest in land stands limited to or in trust for any persons by way of succession, including any such instruments affecting the estates of any one or more of such persons exclusively.

"Tenant in tail after possibility of issue extinct.

(2) For the purposes of this Act a tenant in tail after possibility of issue extinct shall be deemed to be a tenant for life.

Estates in remainder or reversion not disposed of by settlement.

(3) All estates or interests in remainder or reversion not disposed of by the settlement, and reverting to a settlor or descending to the heir, or as upon an intestacy to the representative of a testator, shall be deemed to be estates coming to such settlor, heir or representative under or by virtue of the settlement.

Determining what are settled estates.

(4) In determining what are settled estates within the meaning of this Act the Court shall be governed by the state of facts and by the trusts or limitations of the settlement at the time of the settlement taking effect. 3-4 Geo. V. c. 20, s. 2.

40-41 V.
(Imp.) c. 18,
s. 2.

3.—(1) The Court, if it deems it proper and consistent with a due regard for the interests of all persons entitled under the settlement, and subject to the provisions and restrictions of this Act, may authorize leases of any settled estate or of any rights or privileges over or affecting any settled estate, for any purpose whatsoever, the following conditions being observed:

- (a) Every such lease shall be made to take effect in possession at or within one year after the making thereof, and shall be for such term of years as the Court shall direct, where the Court is satisfied that it is beneficial to the inheritance to grant such a lease; Power to authorize leases of settled estates. Imp. Act 40-41 V. c. 18, s. 4.
- (b) On every such lease shall be reserved the best rent or reservation in the nature of rent, either uniform or not, that can be reasonably obtained, to be made payable half-yearly or oftener, and to be incident to the immediate reversion; but in the case of a mining lease, a repairing lease or a building lease a nominal rent or any smaller rent than the rent to be ultimately made payable may, if the Court thinks fit so to direct, be made payable during all or any part of the first five years of the term of the lease; When lease to take effect. Best rent to be reserved. Exception.
- (c) Where the lease is of any earth, coal, stone or mineral a certain portion of the whole rent or payment reserved shall be from time to time set aside and invested, when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate or by virtue of any declaration in the settlement is entitled to work such earth, coal, stone or mineral for his own benefit, one-fourth part of such rent, and in other cases three-fourth parts thereof; and in every such lease sufficient provisions shall be made to ensure such application of that portion of the rent by the appointment of trustees or otherwise as the Court deems expedient; Reservation of rent in leases of earth, coal, stone or minerals.
- (d) No such lease shall authorize the cutting of any timber or the felling of any trees except in the ordinary course of husbandry, or so far as shall in the judgment of the court be necessary, nor shall it be made without impeachment of waste; Cutting timber.
- (e) Every lease shall be by deed, in duplicate, executed by the lessor and lessee; and shall be subject to the statutory right of re-entry for non-payment of rent contained in *The Landlord and Tenant Act*. Form of lease. Rev. Stat. c. 155.

(2) Any such lease may contain an agreement for the renewal or renewals thereof if the Court thinks fit, and the Agreements for renewal.

Court may determine the length of time for which such renewal or renewals, if any, may be made. 3-4 Geo. V. c. 20, s. 3.

Special
covenants.

4. Subject and in addition to the conditions hereinbefore mentioned every such lease shall contain such covenants, conditions and stipulations as the Court deems expedient with reference to the special circumstances of the demise. 3-4 Geo. V. c. 20, s. 4.

Imp. Act
40-41 V. c.
18, s. 5.

Leases of
parts of set-
tled estates
Imp. Act
40-41 V. c.
18, s. 6.

5. The power to authorize leases conferred by this Act shall authorize leases either of the whole or any part of the settled estate, and may be exercised from time to time. 3-4 Geo. V. c. 20, s. 5.

Surrender
and re-
newal.

Imp. Act
40-41 V. c.
18, s. 7.

6. A lease, whether granted in pursuance of this Act or otherwise, may be surrendered either for the purpose of obtaining a renewal of the same or not, and the power to authorize leases conferred by this Act shall authorize a new lease of the whole or any part of the hereditaments comprised in any surrendered lease. 3-4 Geo. V. c. 20, s. 6.

Preliminary
contracts.
Imp. Act
40-41 V. c.
18, s. 8.

7. The power to authorize leases conferred by this Act shall extend to authorize preliminary contracts to grant such leases, and any of the terms of such contracts may be varied in the leases. 3-4 Geo. V. c. 20, s. 7.

Mode in
which leases
may be
authorized.

Imp. Act
40-41 V. c.
18, s. 10.

8. The power to authorize leases conferred by this Act may be exercised by the Court either by approving of a particular lease or by ordering that the power of leasing in conformity with the provisions of this Act shall be vested in trustees in manner hereinafter mentioned. 3-4 Geo. V. c. 20, s. 8.

What evi-
dence to be
produced on
an applica-
tion to
authorize
leases.

Imp. Act
40-41 V. c.
18, s. 11.

9. Where application is made to the Court either to approve of a particular lease or to vest any power of leasing in trustees the Court shall require the applicant to produce such evidence as it deems sufficient to enable it to ascertain the nature, value and circumstances of the estate and the terms and conditions on which leases thereof ought to be authorized. 3-4 Geo. V. c. 20, s. 9.

Direction
as to
who shall be
lessor.

Imp. Act
40-41 V. c.
18, s. 12.

10. Where a particular lease or contract for a lease has been approved by the Court the Court shall direct what person shall execute the same as lessor; and the lease or contract executed by such person shall take effect in all respects as if he had been at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement and had immediately afterwards settled the same according to the settlement, and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the Court directs. 3-4 Geo. V. c. 20, s. 10.

11. Where the Court deems it expedient that any general power of leasing any settled estate conformably to this Act should be vested in trustees it may, by order, vest any such power accordingly either in the existing trustees of the settlement or in any other person or persons, and such power, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in the settlement, and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the Court shall direct; and in every such case the Court may impose any conditions as to consents or otherwise on the exercise of such power and may also authorize the insertion of provisions in any such order for the appointment of new trustees from time to time for the purpose of exercising such power of leasing. 3-4 Geo. V. c. 20, s. 11.

When powers of leasing may be vested in trustees.

Imp. Act 40-41 V. c. 18, s. 13.

12. In any order under this Act for vesting any power of leasing in any trustees or other person or persons no conditions shall be inserted requiring that the lease thereby authorized shall be submitted to or be settled by the Court or be made conformable with a model lease, unless the person applying for the order desires to have any such condition inserted or it appears to the Court that there is some special reason for the insertion of such a condition. 3-4 Geo. V. c. 20, s. 12.

Conditions that leases be settled by the Court.

Imp. Act 40-41 V. c. 18, s. 14.

13. In any order, whether under this Act or under any other Act, in which any such condition shall have been inserted any person interested may apply to the Court to alter such order by striking out such condition, and the Court may alter the same accordingly, and the order so altered shall have the same validity as if it had originally been made in its altered state; but the Court may decline to act under this provision in any case in which it appears to the Court that for any special reason such a condition is necessary or expedient. 3-4 Geo. V. c. 20, s. 13.

Striking out such conditions.

Imp. Act 40-41 V. c. 18, s. 15.

COURT MAY AUTHORIZE MORTGAGES OR SALES OF SETTLED ESTATES.

14.—(1) The Court, if it deems it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act, may

Powers of Court.

- (a) from time to time authorize a mortgage of the whole or any part of any settled estate for the purpose of raising money to repair, rebuild or alter any existing building upon the estate, or otherwise to build upon or improve the same; or for the purpose of raising money to pay off and discharge wholly or in part any incumbrance thereon;

Mortgages for purpose of repairs, etc.

Sales of settled estates and of timber.
Imp. Act 40-41 V. c. 18, s. 16.

(b) from time to time authorize a sale of the whole or any part of any settled estate or of any easement, right or privilege, of any kind, over or in relation to the same, or of any timber not being ornamental timber growing on the settled estate;

Proceedings for protection of estate.

Imp. Act 45-46 V. c. 38, s. 36.

(c) sanction any action, defence, petition to the Legislature or other proceeding appearing to the Court necessary for the protection of any settled estate, and order that all or any part of the costs and expenses in relation thereto be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estate, or be raised and paid out of the rents and profits of the settled estate, or out of any money or investment representing money liable to be laid out in the purchase of land to be settled in the same manner as the settled estate, or out of the income of such money or investment, or out of any accumulations of rents, profits or income.

When mortgages authorized.

(2) Such mortgage shall be authorized wherever the Court is of opinion that the interests of the estate or any part thereof or of the persons entitled to the estate or any part thereof require, or will be substantially promoted by such mortgage.

How sales conducted.

(3) Every such sale shall be conducted and confirmed in the same manner as by the Rules and practice of the Court is required in the sale of land under an order of the Court. 3-4 Geo. V. c. 20, s. 4.

Rental as consideration for land sold for building.
Imp. Act 40-41 V. c. 18, s. 18.

15. Where land is sold for building purposes the Court may allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the Court approves. 3-4 Geo. V. c. 20, s. 5.

What may be reserved.

Imp. Act 40-41 V. c. 18, s. 19.

16. On any sale of land, any earth, coal, stone or mineral may be excepted and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants or submit to any restrictions which the Court deems advisable. 3-4 Geo. V. c. 20, s. 6.

DEDICATION AND MAINTENANCE OF STREETS, ROADS, ETC.

Dedications for streets, etc.

Imp. Act 40-41 V. c. 18, s. 20.

17.—(1) The Court, if it deems it proper and consistent with a due regard for the interests of all persons entitled under the settlement and subject to the provisions and restrictions of this Act, may from time to time direct that any part of any settled estate be laid out for streets, roads, paths, squares, gardens or other open spaces, or for sewers, drains or watercourses, either to be dedicated to the public or not, and may direct that the parts so laid out shall, subject to the provisions of this Act, remain vested in the trustees of

the settlement or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to such purposes in all respects and with such provisions for the appointment of new trustees when required as the Court deems advisable.

(2) Where any part of any settled estate is directed to be laid out for such purposes the Court may direct that open spaces, sewers, drains or watercourses, including all necessary and proper fences, pavings, connections and other works incidental thereto, be made and executed, and that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estate, or be raised and paid out of the rents and profits of the settled estate or any part thereof, or out of any money or investments representing money liable to be laid out in the purchase of land to be settled in the same manner as the settled estate, or out of the income of such money or investments, or out of any accumulations of rents, profits or income; and the Court may also give such directions as it deems advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens or other open spaces, sewers, drains, or watercourses or other works out of any such rents, profits, income or accumulations during such period as the Court deems advisable.

How provision made for laying out streets, etc.

Imp. Act 40-41 V. c. 18, s. 21.

(3) The powers hereby granted shall be exercised subject to the provisions of *The Registry Act*, *The Land Titles Act*, *The Municipal Act*, and *The City and Suburbs Plans Act*.

Restrictions. Rev. Stat. c. 124, 126, 192, 194.

HOW SALES, MORTGAGES AND DEDICATIONS ARE TO BE EFFECTED UNDER THE DIRECTIONS OF THE COURT.

18. On every sale, mortgage or dedication made under the authority of this Act the Court may direct what person shall execute the deed of conveyance or mortgage, and the deed or mortgage executed by such person shall take effect as if the settlement had contained a power enabling such person to effect such sale, mortgage or dedication, and so as to operate if necessary by way of revocation and appointment of the use or otherwise as the Court directs. 3-4 Geo. V. c. 20, s. 18.

Directions as to execution of deeds. Imp. Act 40-41 V. c. 18, s. 22.

19.—(1) Any of the persons authorized by section 33 to make a demise of a settled estate, and any person entitled to the possession or to the receipt of the rents and profits of a settled estate for any greater estate than the estate mentioned in that section and the assigns of any such person may apply to the Court to exercise the powers conferred by this Act.

Who may apply for exercise of powers.

Imp. Act 40-41 V. c. 18, s. 23.

(2) Where two or more persons are entitled as tenants in common, joint tenants or co-parceners, any or either of them may make the application. 3-4 Geo. V. c. 20, s. 19.

Where jointly entitled.

With whose
consent such
application
to be
made.
Imp. Act 40-
41 V. c. 18,
s. 24.

20.—(1) Subject to the exceptions hereinafter mentioned every application to the Court under this Act shall be made with the concurrence or consent of the following persons:

- (a) Where there is a tenant in tail under the settlement in existence and of full age the persons to concur or consent shall be such tenant in tail, or if there is more than one such tenant in tail then the first of such tenants in tail and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail; and
- (b) In every other case the persons to concur or consent shall be all those in existence having any beneficial estate or interest under or by virtue of the settlement and also all trustees having any estate or interest on behalf of any unborn child.

Notice to
persons
who do
not consent
or concur.

(2) Where the concurrence or consent of any person mentioned in subsection 1 has not been obtained notice shall be given to such person in such manner as the Court directs, requiring him to notify within a time to be specified in such notice whether he assents to or dissents from such application or submits his rights or interests, so far as they may be affected by such application, to be dealt with by the Court, and every such notice shall specify to whom and in what manner such notification is to be delivered or left.

Effect of
non-reply.

Imp. Act 40-
41 V. c. 18,
s. 26.

(3) If no notification is delivered or left in accordance with the notice and within the time thereby limited the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court.

When
Court may
dispense
with notice.

Imp. Act 40-
41 V. c. 18,
s. 27.

(4) Where the concurrence or consent of any such person has not been obtained, and if such person cannot be found or if it is uncertain whether he is living or dead, or if it appears to the Court that such notice cannot be given to him without expense disproportionate to the value of the subject matter of the application, the Court if it thinks fit, either on the ground of the rights or interests of such persons being small or remote or being similar to the rights or interests of any other person or on any other ground, may by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court.

When
Court may
dispense
with consent.

Imp. Act 40-
41 V. c. 18,
s. 28.

(5) An order may be made notwithstanding that the concurrence or consent of any such person has not been obtained or has been refused, but the Court, in considering the application, shall have regard to the number of persons who concur in or consent to the application and who dissent therefrom or who submit or are to be deemed to submit their rights or

interests to be dealt with by the Court, and to the estates or interests which such persons respectively have or claim to have in the estate; and every order made upon such application shall have the same effect as if all such persons had been consenting parties thereto.

(6) The Court may give effect to any application subject to, and so as not to affect the rights, estate or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the Court, or whose rights, estate or interest ought in the opinion of the Court to be excepted. 3-4 Geo. V. c. 20, s. 20.

Order saving rights of non-consenting parties.
Imp. Act 40-41 V. c. 18, s. 29.

21. Notice of any application under this Act shall be served on all trustees who are seized or possessed of any estate in trust for any person whose consent to or concurrence in the application is hereby required, and on any other persons who in the opinion of the Court ought to be so served, unless the Court dispenses with such notice. 3-4 Geo. V. c. 20, s. 21.

Notice to trustees, etc.
Imp. Act 40-41 V. c. 18, s. 30.

22. Notice of any application, if the Court so directs but not otherwise, shall be published in such newspapers as the Court directs, and any person, whether interested in the estate or not, may be heard in opposition to or in support of the application; and the Court may permit such person to appear and be heard in opposition to or in support of the application on such terms as to costs or otherwise and in such manner as it thinks fit. 3-4 Geo. V. c. 20, s. 22.

When notice of application to be given in the newspapers.
Imp. Act 40-41 V. c. 18, s. 31.

23. The Court shall not grant an application where the applicant, or any person entitled, has previously applied to this Legislature for a private Act to effect the same or a similar object, and such application has been rejected on its merits, or reported against by the judges to whom the bill was referred. 3-4 Geo. V. c. 20, s. 23.

Where a similar application has been rejected by the Legislature.
Imp. Act 40-41 V. c. 18, s. 32.

APPLICATION OF MONEY ARISING FROM SALES, ETC.

24. All money to be received on any sale effected under the authority of this Act, or to be set aside out of the rent or payments reserved on any lease of earth, coal, stone or minerals may, if the Court thinks fit, be paid to any trustees of whom it shall approve, otherwise the same shall be paid into court to the credit of the matter of this Act, and the estate (*shortly describing the same*); and such money shall be applied as the Court shall from time to time direct to one or more of the following purposes:—

Payment of money arising from sales or set aside out of rent, etc., reserved on mining leases.
Imp. Act 40-41 V. c. 18, s. 34.

- (a) the payment of any costs which the Court orders to be paid; or Application. Costs.
- (b) the discharge of any incumbrance affecting the land in respect of which such money was paid, or affect- Incumbrances.

ing any other land subject to the same uses or trusts; or

Purchases.

(c) the purchase of other land to be settled in the same manner as the land in respect of which the money was paid; or

Expenses of improvements.

(d) the payment of the expenses connected with any buildings, repairs, rebuilding, alterations or improvements authorized to be made upon the settled estate; or

Person entitled.

(e) the payment to any person becoming absolutely entitled. 3-4 Geo. V. c. 20, s. 24.

Application of money in certain cases without application to Court.

Imp. Act 40-41 V. c. 18, s. 35.

25. The application of the money if the Court so directs may be made by the trustees to whom the Court has authorized the same to be paid, without any application to the Court, or upon an order of the Court upon the petition of the person who would be entitled to the possession or the receipt of the rents and profits of the land if the money had been invested in the purchase of land. 3-4 Geo. V. c. 20, s. 25.

Payment of interest.

Imp. Act 40-41 V. c. 18, s. 36.

26. Until the money can be so applied the interest accruing thereon shall be paid as the Court directs to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land. 3-4 Geo. V. c. 20, s. 25.

Application of money in respect of leases or reversions.

Imp. Act 40-41 V. c. 18, s. 37.

27. Where any purchase money paid into Court or to trustees under the provisions of this Act has been paid in respect of a lease for a life or lives or years, or for a life or lives and years, or of any estate in land less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, the Court may, on the petition of any person interested in such money, order that the interest which shall accrue thereon be paid in such manner as the Court considers will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate or reversion in respect of which such money has been paid, or as near thereto as may be. 3-4 Geo. V. c. 20, s. 27.

EXERCISE OF POWERS BY COURT.

Court may exercise powers repeatedly.

28.—(1) The Court may exercise any of the powers conferred on it by this Act whether the Court shall have already exercised any of such powers in respect of the same property or not; but no such powers shall be exercised if any express declaration that they shall not be exercised is contained in the settlement.

Notwithstanding express powers.

(2) The circumstance that the settlement contains powers to effect similar purposes shall not preclude the Court from exercising any of the powers conferred by this Act if it

thinks that the powers contained in the settlement ought to be extended. 3-4 Geo. V. c. 20, s. 28. Imp. Act 40-41 V. c. 18, s. 38.

29. Nothing in this Act shall empower the Court to authorize any lease, mortgage, sale or other act beyond the extent to which, in the opinion of the Court, the same might have been authorized in and by the settlement by the settlor. Extent of powers. Imp. Act 40-41 V. c. 18, s. 39.
3-4 Geo. V. c. 20, s. 29.

ACTS AND ORDERS OF COURT CONCLUSIVE.

30. After the completion of any lease, mortgage or sale, or other act under the authority of the Court and purporting to be in pursuance of this Act, the same shall not be invalidated on the ground that the Court was not empowered to authorize the same. 3-4 Geo. V. c. 20, s. 30. Validity of Acts. Imp. Act 40-41 V. c. 18, s. 40; 44-45 V. c. 41, s. 70.

31.—(1) An order of the Court under jurisdiction conferred by this Act shall not, as against a lessee, mortgagee or purchaser, be invalidated on the ground of want of jurisdiction or of want of any concurrence, consent, notice or service, whether he had or had not notice of any such want. Orders of Court conclusive. Imp. Act 44-45 Vic. c. 41, s. 70.

(2) This section shall have effect with respect to any lease, mortgage, sale or other act under the authority of the Court and purporting to be in pursuance of this Act, or to be in pursuance of any former Act, notwithstanding any exception in such former Act. 3-4 Geo. V. c. 20, s. 31. Scope of section.

COSTS.

32. The Court may order that any costs or expenses of any persons of and incident to any application under this Act shall be a charge on the land which is the subject of the application, or on any other land included in the same settlement and subject to the same limitations, or may direct the same to be paid out of the corpus or income of any fund realized by the sale, mortgage or lease of such estate under the provisions of this Act, and the Court may also direct that such costs and expenses, to be taxed and paid as the Court directs, shall be raised by a sale or mortgage of a sufficient part of such land or out of the rents or profits thereof. 3-4 Geo. V. c. 20, s. 32. Costs. Imp. Act 40-41 V. c. 18, s. 41.

LEASES BY TENANTS FOR LIFE, ETC.

33.—(1) The following persons, unless the settlement contains an express declaration that it shall not be lawful for them to make the demise, may from time to time and without any application to the Court, except as hereinafter mentioned, demise the settled estate or any part thereof for any term, Power to make leases for 21 years.
61 s.

not exceeding 21 years, to take effect in possession at or within one year next after the making thereof:

By tenants
for life.

(a) a person entitled to the possession or to the receipt of the rents and profits of any settled estate for an estate for life or for a term of years determinable with any life or lives or for any greater estate not holding merely under a lease at a rent;

By tenants
in tail.

(b) a tenant in tail, including a tenant in tail who is by statute restrained from barring or defeating his entail and although the reversion is in the Crown and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect of which he is so restrained was purchased with money provided by any legislation in consideration of public services;

In fee
simple.

(c) a tenant in fee simple with an executory limitation, gift or disposition over on failure of his issue or in any other event;

By holder of
base fee.

(d) a person entitled to a base fee, although the reversion is in the Crown and so that the exercise by him of his powers under this Act shall bind the Crown;

Tenant
for years.

(e) a tenant for years determinable on life not holding merely under a lease at a rent;

Pur autre
vie.

(f) a tenant for the life of another not holding merely under a lease at rent;

For life,
defeasible.

(g) a tenant for his own or any other life or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate or by conditional limitation or otherwise, or to be defeated by an executory limitation, gift or disposition over, or is subject to a trust for accumulation of income for payment of debts or any other purpose;

Tenant
in tail.

(h) a tenant in tail after possibility of issue extinct;

Person
entitled to
income.

(i) a person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life whether subject to expenses of management or not or until sale of the land or until forfeiture of his interest therein on bankruptcy or other event;

Curtsey
and dower.

(2) The powers conferred by the next preceding subsection may be exercised by a person entitled to the possession or to the receipt of the rents and profits of unsettled land as tenant by the curtesy or tenant in dower.

(3) Any of the persons empowered by subsections 1 and 2 ^{Additional powers.} to make a demise may also make:

- (a) a lease for giving effect to a contract entered into ^{In pursuance of contract.} by any of his predecessors in title for making a lease which, if made by the predecessor, would have been binding on the successors in title; and
- (b) a lease for giving effect to a covenant of renewal, ^{In pursuance of covenant for renewal.} performance whereof could be enforced against the owner for the time being of the settled estate; and
- (c) a lease for confirming, as far as may be, a previous ^{For confirmation.} lease being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted under this Act, or otherwise as the case may require.

(4) Where two or more persons are under the same settle- ^{Joint action.} ment or otherwise entitled in possession to concurrent estates for life, or are concurrently entitled to the possession or receipts of the rents and profits as in subsection 1 mentioned, they shall, for the purposes of this section, act concurrently.

(5) Every demise made under this section shall be by deed ^{Form of lease.} in duplicate, and for the best rent that can reasonably be obtained, which rent shall be incident to the immediate reversion and shall be made payable half yearly or oftener.

(6) Such demise shall not be made without impeachment ^{Conditions.} of waste and shall not authorize the cutting of any timber or felling of any trees except in the ordinary course of husbandry, and shall contain a covenant for payment of the rent and such other usual and proper covenants as the lessor shall think fit, and shall be subject to the statutory right of re-entry for non-payment of rent contained in *The Landlord and Tenant Act*. 3-4 Geo. V. c. 20, s. 33.

34.—(1) Every demise of a settled estate authorized by ^{Against whom leases shall be valid.} the next preceding section shall be valid against the person granting the same and all other persons entitled to estates subsequent to his estate under or by virtue of the same settle- ^{Imp. Act 40-41 V. c. 18, s. 47.} ment.

(2) Every demise of unsettled land by a tenant by the ^{Idem.} curtesy or by a tenant in dower shall be valid against the person granting the same and all other persons entitled to an estate subsequent to the estate of such tenant. 3-4 Geo. V. c. 20, s. 33.

PROVISIONS AS TO APPLICATIONS, CONSENTS, ETC.

35. All powers given by this Act, and all applications to ^{Provisions as to infants, lunatics, etc.} the Court under this Act and consents to and notifications

Imp. Act 40-41 V. c. 18, s. 49.

respecting them, may be executed, made or given by, and all notices under this Act may be given to committees on behalf of lunatics, and by or to trustees or assignees of the property of bankrupts, debtors in liquidation or insolvents; and the Official Guardian or any other guardian *ad litem* may consent to, and give notifications respecting such applications, and give all notices under this Act on behalf of any infant or person of unsound mind not so found; but in the case of infants or lunatics, or persons of unsound mind not so found, all consents to or notifications or notices respecting any application so given by any committee or official guardian or other guardian *ad litem* shall be subject to the approbation of the Court. 3-4 Geo. V. c. 20, s. 35.

Married women.

Imp. Act 40-41 V. c. 18, s. 52.

36. A married woman may make or consent to or oppose any application whether she is or is not of full age. 3-4 Geo. V. c. 20, s. 36.

No obligation to make or consent to application.

Imp. Act 40-41 V. c. 18, s. 53.

Tenants for life, etc., to be deemed entitled notwithstanding incumbrances.

37. Nothing in this Act shall impose any obligation on any person to make or consent to any application to the Court or to exercise any power. 3-4 Geo. V. c. 20, s. 37.

Imp. Act 40-41 V. c. 18, s. 54.

38. A person shall be deemed to be entitled to the possession or to the receipt of the rents and profits of an estate although his estate may be charged or encumbered, either by himself or by the settlor or otherwise, to any extent; but the estates or interests of the persons entitled to the charge or encumbrance shall not be affected by the acts of such person unless they concur therein. 3-4 Geo. V. c. 20, s. 38.

Powers conferred by other Acts. 40-41 Vict. c. 18, s. 59.

39. Nothing in this Act shall interfere with the exercise of any powers to authorize or grant leases conferred by any other Statute. 3-4 Geo. V. c. 20, s. 39.

CHAPTER 75.

An Act respecting the Limitation of Actions.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:—

1. This Act may be cited as *The Limitations Act*. 10 Edw. VII. c. 34, s. 1. Short title.

2. In this Act,

Interpretation.

- (a) "Action" shall include an information on behalf of the Crown and any civil proceeding; "Action."
- (b) "Assurance" shall mean any deed or instrument, other than a will, by which land may be conveyed or transferred; "Assurance."
- (c) "Land" shall include messuages and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties or any of them, any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interest or any of them, are in possession, reversion, remainder or contingency; and "Land."
- (d) "Rent" shall include all annuities and periodical sums of money charged upon or payable out of land. 10 Edw. VII. c. 34, s. 2. "Rent."

PART I.

REAL PROPERTY.

3. Nothing in this Act shall interfere with any rule of equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring an action is not barred by virtue of this Act. 10 Edw. VII. c. 34, s. 3. Refusing relief because of acquiescence or otherwise. Imp. Act, 3-4 W. IV. c. 27, s. 27.

4.—(1) No entry, distress, or action shall be made or brought on behalf of His Majesty against any person for the recovery of or respecting any land or rent, or of land or Limitation where the Crown is interested.

for or concerning any revenues, rents, issues or profits, but within sixty years next after the right to make such entry or distress or to bring such action shall have first accrued to His Majesty.

Application of certain sections to Crown.

(2) Subsections 1 to 3, 5 to 7, and 9 to 12 of section 6 and sections 7, 9 to 12 and 14 to 16 shall apply to rights of entry, distress or action asserted by or on behalf of His Majesty. 10 Edw. VII. c. 34, s. 4.

Limitation where the subject interested.

5. No person shall make an entry or distress, or bring an action to recover any land or rent, but within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to some person through whom he claims, or if such right did not accrue to any person through whom he claims, then within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing the same. 10 Edw. VII. c. 34, s. 5.

Imp. Acts 3-4
W. IV. c. 27,
s. 2; 37-38 V.
c. 57, s. 1.

When right accrues on dispossession.

6.—(1) Where the person claiming such land or rent, or some person through whom he claims, has, in respect of the estate or interest claimed, been in possession or in receipt of the profits of such land, or in receipt of such rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, the right to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were so received.

Imp. Act, 3-4
W. IV. c. 27,
s. 3.

On death.

Imp. Act, 3-4
W. IV. c. 27,
s. 3.

(2) Where the person claiming such land or rent claims the estate or interest of a deceased person who continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and was the last person entitled to such estate or interest who was in such possession or receipt, such right shall be deemed to have first accrued at the time of such death.

On alienation.
Imp. Act, 3-4
W. IV. c. 27,
s. 3.

(3) Where the person claiming such land or rent claims in respect of an estate or interest in possession, granted, appointed or otherwise assured by an assurance, to him or some person through whom he claims, by a person being, in respect of the same estate or interest, in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under such assurance has been in possession or receipt, such right shall be deemed to have first accrued at the time at which the person so claiming or the person, through whom he claims, became entitled to such possession or receipt by virtue of such assurance.

As to land not cultivated or improved.

(4) In the case of land granted by the Crown of which the grantee, his heirs or assigns, by themselves, their servants or agents, have not taken actual possession by residing upon

or cultivating some part thereof, and of which some other person not claiming to hold under such grantee has been in possession, such possession having been taken while the land was in a state of nature, then unless it is shown that such grantee or person claiming under him while entitled to the land had knowledge of the same being in the actual possession of such other person, the lapse of ten years shall not bar the right of such grantee or any person claiming under him to bring an action for the recovery of such land, but the right to bring an action shall be deemed to have accrued from the time that such knowledge was obtained; but no such action shall be brought or entry made after twenty years from the time such possession was taken.

(5) Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent by virtue of a lease in writing, by which a rent amounting to the yearly sum of \$4 or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person so wrongfully claiming, and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

Where rent reserved by lease in writing has been wrongfully received.
Imp. Act, 3-4
W. IV. c. 27
s. 9.

(6) Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy was received, whichever last happened.

Where tenancy from year to year
Imp. Act, 3-4
W. IV. c. 27.
s. 8.

(7) Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined.

In the case of a tenant at will.
Imp. Act, 3-4
W. IV. c. 27,
s. 7.

Case of mort-
gagor or
cestui que
trust.

(8) No mortgagor or *cestui que trust* shall be deemed to be a tenant at will to his mortgagee or trustee within the meaning of the next preceding subsection.

In case of
forfeiture or
breach of con-
dition.

Imp. Act, 3-4
W. IV. c. 27,
s. 3.

(9) Where the person claiming such land or rent, or the person through whom he claims, has become entitled by reason of any forfeiture or breach of condition such right shall be deemed to have first accrued when such forfeiture was incurred or such condition broken.

Where advan-
tage of forfei-
ture is not
taken by
remainder-
man.

Imp. Act, 3-4
W. IV. c. 27,
s. 4.

(10) Where any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, has first accrued in respect of any estate or interest in reversion or remainder and the land or rent has not been recovered by virtue of such right, the right to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued in respect of such estate or interest at the time when the same became an estate or interest in possession as if no such forfeiture or breach of condition had happened.

In case of
future estates.
Imp. Act, 3-4
W. IV. c. 27,
s. 3.

(11) Where the estate or interest claimed is an estate or interest in reversion or remainder, or other future estate or interest, and no person has obtained the possession or receipt of the profits of such land, or the receipt of such rent, in respect of such estate or interest, such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession.

Further
provision for
case of future
estates.

Imp. Act, 3-4
W. IV. c. 27,
s. 5.
37-38 V. c.
57, s. 2.

(12) A right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder or other future estate or interest at the time at which the same became an estate or interest in possession, by the determination of any estate or estates in respect of which such land has been held or the profits thereof or such rent have been received, notwithstanding that the person claiming such land or rent, or some person through whom he claims, has, at any time previously to the creation of the estate or estates which have determined, been in the possession or receipt of the profits of such land, or in receipt of such rent. 10 Edw. VII. c. 34, s. 6.

Limitation in
case of future
estates when
person en-
titled to the
particular
estate out of
possession, etc.
Imp. Act, 37-
38 V. c. 57,
s. 2.

7.—(1) If the person last entitled to any particular estate on which any future estate or interest was expectant has not been in the possession or receipt of the profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made and no such action shall be brought by any person becoming entitled in possession to a future estate or interest, but within ten years next after the time when the right to make an entry or distress, or to bring an action for the recovery of such land or rent, first accrued to the person whose interest has so determined, or within five years next after the

time when the estate of the person becoming entitled in possession has become vested in possession, whichever of those two periods is the longer.

(2) If the right of any such person to make such entry or distress, or to bring any such action, has been barred no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will or settlement executed or taking effect after the time when a right to make an entry or distress or to bring an action for the recovery of such land or rent, first accrued to the owner of the particular estate whose interest has so determined, shall make any such entry or distress, or bring any such action, to recover such land or rent.

The case of bar of future estate and of a subsequent interest created after right of entry, etc., accrued to owner of particular estate.
Imp. Act, 37-38 V. c. 57, s. 2.

(3) Where the right of any person to make an entry or distress, or to bring an action to recover any land or rent to which he has been entitled for an estate or interest in possession, has been barred by the determination of the period which is applicable in such case, and such person has, at any time during such period, been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or action shall be made or brought by such person, or by any person claiming through him, to recover such land or rent in respect of such other estate, interest, right or possibility, unless in the meantime such land or rent has been recovered by some person entitled to an estate, interest or right which has been limited or taken effect after or in defeasance of such estate or interest in possession. 10 Edw. VII. c. 34, s. 7.

Bar of right to future estates acquired after bar of particular estate.
Imp. Act, 3-4 W. IV. c. 27, s. 20.

8. For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose property he has been appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration. 10 Edw. VII. c. 34, s. 8.

When right of action devolves to administrator.
Imp. Act, 3-4 W. IV. c. 27, s. 6.

9. No person shall be deemed to have been in possession of any land, within the meaning of this Act, merely by reason of having made an entry thereon. 10 Edw. VII. c. 34, s. 9.

Effect of mere entry.
Idem, s. 10.

10. No continual or other claim upon or near any land shall preserve any right of making an entry or distress, or of bringing an action. 10 Edw. VII. c. 34, s. 10.

Continual claim.
Idem, s. 11.

11. No descent cast, discontinuance or warranty, which has happened or been made since the first day of July, 1834, or which may hereafter happen or be made, shall toll or defeat any right of entry or action for the recovery of land. 10 Edw. VII. c. 34, s. 11.

Descent cast, discontinuance, warranty, etc.
Idem, s. 39.

Possession of
one coparcener,
etc. Idem, s. 12.

12. Where any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common has or have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them. 10 Edw. VII. c. 34, s. 12.

Possession of
relations.
Idem, s. 13.

13. Where a relation of the persons entitled, as heirs, to the possession or receipt of the profits of any land, or to the receipt of any rent, enters into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the persons entitled as heirs. 10 Edw. VII. c. 34, s. 13.

Effect of
acknowledgment in writ-
ing.
Idem, s. 14.

14. Where any acknowledgment in writing of the title of the person entitled to any land or rent has been given to him or to his agent, signed by the person in possession or in receipt of the profits of such land, or in the receipt of such rent, such possession or receipt of or by the person by whom such acknowledgement was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment was given at the time of giving the same, and the right of such last mentioned person, or of any person claiming through him, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. 10 Edw. VII. c. 34, s. 14.

Effect of
receipt of
rent.
Idem, s. 35.

15. The receipt of the rent payable by any lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act. 10 Edw. VII. c. 34, s. 15.

Extinguish-
ment of right
at the end of
the period of
limitation.
Idem, s. 34.

16. At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, or action respectively might have been made or brought within such period shall be extinguished. 10 Edw. VII. c. 34, s. 16.

Waste or
vacant land
of Crown
excepted.

17. Nothing in the foregoing sections shall apply to any waste or vacant land of the Crown whether surveyed or not. 10 Edw. VII. c. 34, s. 17.

Arrears of Rent, and Interest.

18.—(1) No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, whether it is or is not charged upon land, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, or action, but within six years next after the same respectively has become due, or next after any acknowledgment in writing of the same has been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent.

(2) This section shall not apply to an action for redemption brought by a mortgagor or any person claiming under him. 10 Edw. VII. c. 34, s. 18.

19. Where any prior mortgagee or other incumbrancer has been in possession of any land, or in the receipt of the profits thereof, within one year next before an action is brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action the arrears of interest which have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt, although such time may have exceeded such term of six years. 10 Edw. VII. c. 34, s. 19.

Mortgages and Charges on Land.

20. Where a mortgagee has obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage the mortgagor, or any person claiming through him, shall not bring any action to redeem the mortgage, but within ten years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, has been given to the mortgagor or to some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee, or the person claiming through him, and in such case no such action shall be brought, but within ten years next after the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given. 10 Edw. VII. c. 34, s. 20.

21. Where there are more mortgagors than one, or more persons than one claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons. 10 Edw. VII. c. 34, s. 21.

Acknowledgment to one of several mortgagees. s. 28.
3-4 W. IV. c. 27; 37-38 V. c. 57, s. 7.

22. Where there are more mortgagees than one, or more persons than one claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the person or persons so signing, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under him, or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons as have given such acknowledgment are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage. 10 Edw. VII. c. 34, s. 22.

Limitation where mortgage in arrear. Imp. Act, 7 W. IV. and 1 V. c. 28.

23. Any person entitled to or claiming under a mortgage of land may make an entry or bring an action to recover such land, at any time within ten years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than ten years have elapsed since the time at which the right to make such entry or bring such action first accrued. 10 Edw. VII. c. 34, s. 23.

Limitation in case of money charged upon land and legacies. Imp. Acts, 3-4 W. IV. c. 27, s. 40; and 37-38 V. c. 57, s. 8.

24.—(1) No action shall be brought to recover out of any land or rent any sum of money secured by any mortgage or lien, or otherwise charged upon or payable out of such land or rent, or to recover any legacy, whether it is or is not charged upon land, but within ten years next after a present right to receive the same accrued to some person capable of giving a discharge for, or release of the same, unless in the meantime some part of the principal money or some interest thereon has been paid, or some acknowledgment in writing of the right thereto signed by the person by whom the same is payable, or his agent, has been given to the person entitled thereto or his agent; and in such case no action shall be brought but within ten years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one, was made or given.

Case of execution against land.

(2) Notwithstanding the provisions of subsection 1, a lien or charge created by the placing of an execution or other process against land in the hands of the sheriff, or other

officer to whom it is directed, shall remain in force so long as such execution or other process remains in the hands of such sheriff or officer for execution and is kept alive by renewal or otherwise. 10 Edw. VII. c. 34, s. 24.

25. No action shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust. 10 Edw. VII. c. 34, s. 25.

Time for recovering charges and arrears of interest not to be enlarged by express trusts for raising same.
Imp. Act, 37-38 V. c. 57, s. 10.

Dower.

26. Subject to the provisions of section 24, no action of dower shall be brought but within ten years from the death of the husband of the dowress, notwithstanding any disability of the dowress or of any person claiming under her. 10 Edw. VII. c. 34, s. 26.

Limitation of action of dower.

27. Where a dowress has, after the death of her husband, actual possession of the land of which she is dowable, either alone or with an heir or devisee of, or a person claiming by devolution from her husband, the period of ten years within which her action of dower is to be brought shall be computed from the time when such possession of the dowress ceased. 10 Edw. VII. c. 34, s. 27.

Time from which right to bring action of dower to be computed.

28. No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action for a longer period than six years next before the commencement of such action. 10 Edw. VII. c. 34, s. 28.

Maximum of arrears of dower recoverable.
Imp. Act, 3-4 W. IV. c. 27, s. 41.

Estates Tail.

29. Where the right of a tenant in tail of any land or rent to make an entry or distress, or to bring an action to recover the same, has been barred by reason of the same not having been made or brought within the period limited by this Act, no such entry, distress or action shall be made or brought by any person claiming any estate, interest or right which such tenant in tail might lawfully have barred. 10 Edw. VII. c. 34, s. 29.

Limitation in case of those whose rights tenant in tail could have barred.
Imp. Act, 3-4 W. IV. c. 27, s. 21.

30. Where a tenant in tail of any land or rent, entitled to recover the same, has died before the expiration of the period applicable in such case for making an entry or distress or bringing an action to recover such land or rent, no person claiming any estate, interest or right which such tenant in tail might lawfully have barred, shall make an entry or distress, or bring an action, to recover such land or rent, but within the period during which, if such tenant in tail had

Case where tenant in tail has died during period of limitation.
Idem, s. 22.

so long continued to live, he might have made such entry or distress or brought such action. 10 Edw. VII. c. 34, s. 30.

Where possession under an assurance by a tenant in tail does not bar the remainders. Imp. Acts, 3-4 W. IV. c. 27, s. 23; and 37-38 V. c. 57, s. 6.

31. Where a tenant in tail of any land or rent has made an assurance thereof, which does not operate to bar the estate or estates to take effect after or in defeasance of his estate tail, and any person is by virtue of such assurance, at the time of the execution thereof, or at any time afterwards, in possession or receipt of the profits of such land, or in the receipt of such rent, and the same person, or any other person, other than a person entitled to such possession or receipt in respect of an estate which has taken effect after or in defeasance of the estate tail, continues or is in such possession or receipt for the period of ten years next after the commencement of the time at which such assurance, if it had then been executed by such tenant in tail, or the person who would have been entitled to his estate tail if such assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates, then, at the expiration of such period of ten years, such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after or in defeasance of such estate tail. 10 Edw. VII. c. 34, s. 31.

Concealed Fraud.

Cases where fraud remains concealed. Imp. Act, 3-4 W. IV. c. 27, s. 26.

32. In every case of a concealed fraud the right of any person to bring an action for the recovery of any land or rent of which he or any person through whom he claims may have been deprived by such fraud shall be deemed to have first accrued at and not before the time at which such fraud was or with reasonable diligence might have been first known or discovered. 10 Edw. VII. c. 34, s. 32.

Case of bona fide purchaser for value without notice. Idem, s. 26.

33. Nothing in the next preceding section shall enable any owner of land or rent to bring an action for the recovery of such land or rent, or for setting aside any conveyance thereof, on account of fraud against any purchaser in good faith for valuable consideration, who has not assisted in the commission of such fraud, and who, at the time that he made the purchase did not know, and had no reason to believe that any such fraud had been committed. 10 Edw. VII. c. 34, s. 33.

Prescription in Case of Easements.

Limitation in case of profits. Imp. Act, 2-3 W. IV. c. 21, s. 1.

34. No claim which may be lawfully made at the common law, by custom, prescription or grant, to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or of any person, except such matters or things as are hereinafter specially provided for, and except rent and services, where such profit or benefit has been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, shall be

defeated or destroyed by showing only that such profit or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such profit or benefit has been so taken and enjoyed for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that the same was taken and enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. 10 Edw. VII. c. 34, s. 34.

Indefeasible if enjoyed over 60 years.

35. No claim which may lawfully be made at the common law by custom, prescription or grant, to any way or other easement, or to any water-course, or the use of any water to be enjoyed, or derived upon, over, or from any land or water of the Crown or being the property of any person, when such way or other matter as herein last before mentioned has been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to the period of twenty years, but, nevertheless, such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned has been so enjoyed for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. 10 Edw. VII. c. 34, s. 35.

Right of way. Easements or water course. Idem, s. 2.

Indefeasible if enjoyed over 40 years.

36. Each of the respective periods of years in the next preceding two sections mentioned shall be deemed and taken to be the period next before some action wherein the claim or matter to which such period relates was or is brought into question; and no act or other matter shall be deemed an interruption within the meaning of those sections, unless the same has been submitted to or acquiesced in for one year after the person interrupted has had notice thereof, and of the person making or authorizing the same to be made. 10 Edw. VII. c. 34, s. 36.

How period to be calculated, and what acts deemed an interruption. Idem, s. 4.

37. No person shall acquire a right by prescription to the access and use of light to or for any dwelling-house, workshop or other building. 10 Edw. VII. c. 34, s. 37.

Right to access and use of light by prescription abolished.

38. In the cases mentioned in and provided for by this Act, of claims to ways, water-courses, or other easements, no presumption shall be allowed or made in favour or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as is applicable to the case and to the nature of the claim. 10 Edw. VII. c. 34, s. 38.

Necessity for strict proof. Idem, s. 6.

Easements not
acquired for
carrying wires
and cables.

39. No easement in respect of wires or cables attached to property or buildings or passing through or carried over such property or buildings shall be deemed to have been acquired or shall hereafter be acquired by prescription or otherwise than by grant from the owner of such property or buildings. 10 Edw. VII. c. 34, s. 39.

DISABILITIES AND EXCEPTIONS.

1.—In Cases of Land or Rent.

In cases of
infancy or
lunacy at the
time when
the right of
action accrues.
Imp. Acts, 3-4
W. IV. c. 27,
s. 16; 37-38
V. c. 57, s. 3.

40. If at any time at which the right of any person to make an entry or distress, or to bring an action to recover any land or rent, first accrues, as herein mentioned, such person is under any of the disabilities hereinafter mentioned, that is to say: infancy, idiocy, lunacy or unsoundness of mind, such person, or the person claiming through him, notwithstanding that the period of ten years or five years, as the case may be, hereinbefore limited has expired, may make an entry or distress, or bring an action, to recover such land or rent at any time within five years next after the time at which the person to whom such right first accrued ceased to be under any such disability, or died, whichever of those two events first happened. 10 Edw. VII. c. 34, s. 40.

Utmost allow-
ance for dis-
abilities.
Imp. Acts, 3-4
W. IV. c. 27,
s. 17; 37-38
V. c. 57, s. 5.

41. No entry, distress or action, shall be made or brought by any person, who, at the time at which his right to make any entry or distress, or to bring an action, to recover any land or rent first accrued was under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within twenty years next after the time at which such right first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such twenty years, or although the term of five years from the time at which he ceased to be under any such disability, or died, may not have expired. 10 Edw. VII. c. 34, s. 41.

Case of a
succession of
disabilities.
Imp. Acts, 3-4
W. IV. c. 27,
s. 18; 37-38
V. c. 57, s. 9.

42. Where any person is under any of the disabilities hereinbefore mentioned, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent first accrues, and departs this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent beyond the period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent, first accrued or the period of five years next after the time at which such person died, shall be allowed by reason of any disability of any other person. 10 Edw. VII. c. 34, s. 42.

2.—In Cases of Easements.

Cases of
infancy or
lunacy when
right accrues.

43. The time during which any person otherwise capable of resisting any claim to any of the matters mentioned in

sections 34 to 39, is an infant, idiot, lunatic, of unsound mind, or tenant for life, or during which any action has been pending and has been diligently prosecuted, shall be excluded in the computation of the period in such sections mentioned, except only in cases where the right or claim is thereby declared to be absolute and indefeasible. 10 Edw. VII. c. 34, s. 43.

44. Where any land or water upon, over or from which any such way or other easement, water-course or use of water has been enjoyed or derived, has been held under or by virtue of any term of life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned during the continuance of such term shall be excluded in the computation of the period of forty years, mentioned in section 35, if the claim is within three years next after the end, or sooner determination of such term, resisted by any person entitled to any reversion expectant on the determination thereof. 10 Edw. VII. c. 34, s. 44.

45. Nothing in sections 34 to 39 shall support or maintain any claim to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or to any way or other easement, or to any water-course or the use of any water to be enjoyed or derived upon, over or from any land or water of the Crown, unless such land, way, easement, water-course or other matter lies and is situate within the limits of some town or township, or other parcel or tract of land duly surveyed and laid out by authority of the Crown. 10 Edw. VII. c. 34, s. 45.

PART II.

TRUSTS AND TRUSTEES.

46. This Part shall apply to a trust created by an instrument or an Act of this Legislature heretofore or hereafter executed or passed. 10 Edw. VII. c. 34, s. 46.

47.—(1) In this section “trustee” shall include an executor, an administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee, and shall also include a joint trustee.

(2) In an action against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof, still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply:—

(a) All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action if the trustee or person claiming through him had not been a trustee or person claiming through a trustee.

(b) If the action is brought to recover money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of, and be at liberty to plead, the lapse of time as a bar to such action in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received; but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

Effect of judgment upon rights of beneficiaries.

(3) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action and this section had been pleaded.

Operation of section.

(4) This section shall apply only to actions commenced after the first day of January, 1892, and shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing statute of limitations. 10 Edw. VII. c. 34, s. 47.

When right accrues in case of express trust. Imp. Act, 3-4 W. IV. c. 27, s. 25.

48.—(1) Where any land or rent is vested in a trustee upon any express trust, the right of the *cestui que trust* or any person claiming through him to bring an action against the trustee or any person claiming through him to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which such land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

Claim of *cestui que trust* against trustee.

(2) Subject to the provisions of the next preceding section no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations. 10 Edw. VII. c. 34, s. 48.

PART III.

PERSONAL ACTIONS.

49.—(1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned: Limitation of time for commencing particular actions

(a) An action for rent, upon an indenture of demise;

(b) An action upon a bond, or other specialty, except upon a covenant contained in an indenture of mortgage made on or after the 1st day of July, 1894;

(c) An action upon a recognizance;

within twenty years after the cause of action arose;

(d) An action upon an award where the submission is not by specialty;

(e) An action for an escape;

(f) An action for money levied on execution;

(g) An action for trespass to goods or land, simple contract or debt grounded upon any lending or contract without specialty, debt for arrears of rent, detainue, replevin or upon the case other than for slander;

within six years after the cause of action arose;

(h) An action for a penalty, damages, or a sum of money given by any statute to the Crown or the party aggrieved within two years after the cause of action arose;

(i) An action upon the case for words within two years after the words spoken;

(j) An action for assault, battery, wounding or imprisonment within four years after the cause of action arose;

(k) An action upon a covenant contained in an indenture of mortgage, made on or after the 1st day of July, 1894, within ten years after the cause of action arose;

(l) An action for a penalty imposed by any statute brought by any informer suing for himself alone, or for the Crown as well as himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose; Actions for penalties.

(2) Nothing in this section shall extend to any action where the time for bringing the action is by any statute specially limited. 10 Edw. VII. c. 34, s. 49. Where time specially limited.

Actions of
account, etc.

50. Every action of account, or for not accounting, or for such accounts as concerns the trade of merchandise between merchant and merchant, their factors and servants, shall be commenced within six years after the cause of action arose; and no claim in respect of a matter which arose more than six years before the commencement of the action, shall be enforceable by action by reason only of some other matter of claim comprised in the same account, having arisen within six years next before the commencement of the action. 10 Edw. VII. c. 34, s. 50.

In case of
disability
of plaintiff.

51. Where a person entitled to bring any action mentioned in either of the next two preceding sections is at the time the cause of action accrues an infant, idiot, lunatic or of unsound mind, the period within which such action should be brought shall be reckoned from the date when such person became of full age or of sound mind. 10 Edw. VII. c. 34, s. 51.

Non-resident
defendants.

52. If a person against whom any cause of action mentioned in sections 49 and 50 accrues is at such time out of Ontario, the person entitled to the cause of action may bring the action within such times as are before limited after the return of the absent person to Ontario. 10 Edw. VII. c. 34, s. 52.

As to cases
where some
joint debtors
have been
within and
some without
Ontario.

53.—(1) Where a person has any such cause of action against joint debtors or joint contractors he shall not be entitled to any time within which to commence such action against any one of them who was within Ontario at the time the cause of action accrued, by reason only that some other of them was, at the time the cause of action accrued, out of Ontario.

Effect of
recovery
against one
joint debtor.

(2) The person having such cause of action shall not be barred from commencing an action against a joint debtor or joint contractor who was out of Ontario at the time the cause of action accrued, after his return to Ontario, by reason only that judgment has been already recovered against a joint debtor or joint contractor who was at such time within Ontario. 10 Edw. VII. c. 34, s. 53.

Acknowledgments or Promises.

Effect of writ-
ten acknow-
ledgment or
part payment.

54. Where an acknowledgment in writing, signed by the principal party or his agent, is made by a person liable upon an indenture, specialty or recognizance, or where an acknowledgment is made by such person by part payment, or part satisfaction, on account of any principal or interest due on such indenture, specialty or recognizance, the person entitled may bring an action for the money remaining unpaid and so acknowledged to be due, within twenty years, or, in the cases mentioned in clause (k) of subsection 1 of section 49,

within ten years after such acknowledgment in writing, or part payment, or part satisfaction, or where the person entitled is, at the time of the acknowledgment under disability as aforesaid, or the person making the acknowledgment is, at the time of making the same, out of Ontario, then within twenty years, or in the cases aforesaid within ten years, after the disability has ceased, or the person has returned, as the case may be. 10 Edw. VII. c. 34, s. 54.

55.—(1) No acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take out of the operation of this Part, any case falling within its provisions respecting actions

- (a) of account and upon the case,
- (b) on simple contract or of debt grounded upon any lending or contract without specialty, and
- (c) of debt for arrears of rent,

or to deprive any party of the benefit thereof, unless such acknowledgment or promise is made or contained by or in some writing signed by the party chargeable thereby, or by his agent duly authorized to make such acknowledgment or promise.

(2) Nothing in this section shall alter, take away or lessen the effect of any payment of any principal or interest by any person. 10 Edw. VII. c. 34, s. 55.

Effect of
payment of
principal or
interest.
Imp. Act, 9
Geo. IV. c. 14,
s. 1.

56. Where there are two or more joint debtors or joint contractors, or joint obligors, or covenantors, or executors or administrators of any debtor or contractor, no such joint debtor, joint contractor, joint obligor, or covenantor, or executor or administrator shall lose the benefit of this Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed, or by reason of any payment of any principal or interest made, by any other or others of them. 10 Edw. VII. c. 34, s. 56.

Case of two
or more joint
contractors,
obligors,
covenantors,
or executors.

57. In actions commenced against two or more such joint debtors, joint contractors, executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act, as to one or more of such joint debtors, joint contractors, or executors or administrators is nevertheless entitled to recover against any other or others of the defendants by virtue of a new acknowledgment, promise or payment, judgment shall be given for the plaintiff as to the defendant or defendants against whom he recovers, and for the other defendant or defendants against the plaintiff. 10 Edw. VII. c. 34, s. 57.

Judgment
where plaintiff
is barred as to
one or more
defendants,
but not as to
all.

58. No endorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the person to whom the

Effect of
endorsement,
etc., made by
the payee.

payment has been made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of this Act. 10 Edw. VII. c. 34, s. 58.

Case of set-off.

59. This Part shall apply to the case of any claim of the nature hereinbefore mentioned, alleged by way of set-off on the part of any defendant. 10 Edw. VII. c. 34, s. 59.

CHAPTER 76.

An Act respecting Witnesses and Evidence.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Evidence Act*. 9 Edw. VII. Short title. c. 43, s. 1.

INTERPRETATION.

2. In this Act,

Interpretation

(a) "Court" shall include a judge, arbitrator, umpire, "Court." commissioner, police magistrate, justice of the peace or other officer or person having by law or by consent of parties authority to hear, receive and examine evidence.

(b) "Action" shall include an issue, matter, arbitration, "Action." reference, investigation, inquiry, a prosecution for an offence committed against a Statute of Ontario or against a by-law or regulation made under the authority of any such Statute and any other proceeding authorized or permitted to be tried, heard, had or taken by or before a court under the law of Ontario. 9 Edw. VII. c. 43, s. 2.

APPLICATION OF ACT.

3. This Act shall extend and apply to the evidence offered or taken orally or by interrogatories or affidavits or by the production of documents or things or otherwise by or before a court in an action. 9 Edw. VII. c. 43, s. 3.

Application of Act.

COMPETENCY OF WITNESSES.

4. No person offered as a witness in an action shall be excluded by reason of any alleged incapacity from crime or interest from giving evidence. 9 Edw. VII. c. 43, s. 4.

Witnesses not to be incapacitated by crime or interest.

5. Every person offered as a witness shall be admitted to give evidence notwithstanding that he has an interest in the matter in question or in the event of the action, and notwithstanding that he has been previously convicted of a crime or offence. 9 Edw. VII. c. 43, s. 5.

Admissibility notwithstanding interest or crime

Evidence of parties.

6. The parties to an action, and the persons on whose behalf the same is brought, instituted, opposed or defended shall, except as hereinafter otherwise provided, be competent and compellable to give evidence on behalf of themselves or of any of the parties; and the husbands and wives of such parties and persons shall, except as hereinafter otherwise provided, be competent and compellable to give evidence on behalf of any of the parties. 9 Edw. VII. c. 43, s. 6.

Evidence of husband and wife.

Witness not excused from answering questions tending to criminate.

7.—(1) A witness shall not be excused from answering any question upon the ground that the answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person or to a prosecution under any Act of this Legislature.

Answer not to be used in evidence against him.

(2) If, with respect to any question, a witness objects to answer upon any of the grounds mentioned in subsection 1, and if, but for this section or any Act of the Parliament of Canada, he would therefore have been excused from answering such question, then, although the witness is by reason of this section or by reason of any Act of the Parliament of Canada compelled to answer, the answer so given shall not be used or receivable in evidence against him in any civil proceeding or in any proceeding under any Act of this Legislature. 9 Edw. VII. c. 43, s. 7.

Evidence in proceedings in consequence of adultery.

8. The parties to an action or proceeding instituted in consequence of adultery, and their husbands and wives shall be competent but not compellable to give evidence, but the husband or wife, if competent only under this Act, shall not be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless he or she shall have already given evidence in the same action or proceeding in disproof of his or her alleged adultery. 9 Edw. VII. c. 43, s. 8.

Communications made during marriage.

9. A husband shall not be compellable to disclose any communication made to him by his wife during the marriage, nor shall a wife be compellable to disclose any communication made to her by her husband during the marriage. 9 Edw. VII. c. 43, s. 9.

EXPERT EVIDENCE.

Limit of number of expert witnesses in action, etc.

10. Where it is intended by any party to examine as witnesses persons entitled, according to the law or practice, to give opinion evidence not more than three of such witnesses may be called upon either side without the leave of the judge or other person presiding, to be applied for before the examination of any of such witnesses. 9 Edw. VII. c. 43, s. 10.

CORROBORATIVE EVIDENCE.

Breach of promise of marriage.

11. The plaintiff in an action for breach of promise of marriage shall not recover unless his or her testimony is cor-

roborated by some other material evidence in support of the promise. 9 Edw. VII. c. 43, s. 11.

12. In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not obtain a verdict, judgment, or decision, on his own evidence, in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence. 9 Edw. VII. c. 43, s. 12.

Actions by or against representatives of a deceased person.

13. In an action by or against a lunatic so found or an inmate of a lunatic asylum, or a person who from unsoundness of mind is incapable of giving evidence, an opposite or interested party shall not obtain a verdict, judgment, or decision on his own evidence, unless such evidence is corroborated by some other material evidence. 9 Edw. VII. c. 43, s. 13.

In actions by or against lunatics, etc.

OATHS AND AFFIRMATIONS.

14. Where an oath may lawfully be administered to any person as a witness or as a deponent in an action or on appointment to any office or employment or on any occasion whatever, such person shall be bound by the oath administered, if the same is administered in such form and with such ceremonies as such person may declare to be binding. 9 Edw. VII. c. 43, s. 14.

Deponent may take oath declared to be binding.
Imp. 1-2 V. c. 105.

15.—(1) If a person called as a witness or required or desiring to give evidence or to make an affidavit or deposition in an action or on an occasion whereon or touching a matter respecting which an oath is required or permitted, objects to take an oath or is objected to as incompetent to take an oath, and if the presiding judge or the person qualified to take affidavits or depositions is satisfied that such person objects to be sworn from conscientious scruples, or on the ground of his religious belief, or on the ground that the taking of an oath would have no binding effect on his conscience, such person may make an affirmation and declaration in lieu of taking an oath and such affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

Affirmations or declarations instead of oaths.

(2) Where the evidence is in the form of an affidavit or written deposition the person before whom the same is taken shall certify that the deponent satisfied him that he was a person entitled to affirm. 9 Edw. VII. c. 43, s. 15.

Certificate that deponent entitled to affirm.

ATTENDANCE OF WITNESSES.

16. A witness served in due time with a subpoena issued out of any court in Ontario, and paid his proper witness fees and conduct money, who makes default in obeying such

Witness disobeying subpoena liable to action.

subpœna, without any lawful and reasonable impediment, shall, in addition to any penalty he may incur as for a contempt of court, be liable to an action on the part of the person by whom, or on whose behalf, he has been subpœnaed for any damage which such person may sustain or be put to by reason of such default. 9 Edw. VII. c. 43, s. 16.

Imp. 5 Eliz.
c. 9, s. 6.

ISSUE OF SUBPŒNAS INTO ANY PART OF ONTARIO OR QUEBEC.

[Sections 4-11 and 13 of C. S. C. c. 79, which were taken from 18 Vict. c. 9, s.s. 1-4, 6, 7, are not consolidated in the Revised Statutes of Canada, 1906, and are as follows:]

Courts may issue subpœnas to any part of Canada.

4. If in any action or suit depending in any of Her Majesty's Superior Courts of Law or Equity in Canada, it appears to the Court, or when not sitting, it appears to any Judge of the Court that it is proper to compel the personal attendance at any trial or *enquête* or examination of witnesses, of any person who may not be within the jurisdiction of the Court in which the action or suit is pending, the Court or Judge, in their or his discretion, may order that a writ called a writ of *subpœna ad testificandum* or of *subpœna duces tecum* shall issue in special form, commanding such person to attend as a witness at such trial or *enquête* or examination of witnesses wherever he may be in Canada.

Service thereof in any part of Canada to be good.

5. The service of any such writ or process in any part of Canada, shall be as valid and effectual to all intents and purposes, as if the same had been served within the jurisdiction of the Court from which it has issued, according to the practice of such Court.

When not to be issued.

6. No such writ shall be issued in any case in which an action is pending for the same cause of action, in that section of the Province, whether Upper or Lower Canada respectively, within which such witness or witnesses may reside.

Writs to be specially noted.

7. Every such writ shall have at the foot, or in the margin thereof, a statement or notice that the same is issued by the special order of the Court or Judge making such order, and no such writ shall issue without such special order.

Consequences of disobedience.

8. In case any person so served does not appear according to the exigency of such writ or process, the Court out of which the same issued, may, upon proof made of the service thereof, and of such default to the satisfaction of such Court, transmit a certificate of such default, under the seal of the same Court, to any of Her Majesty's Superior Courts of Law or Equity in that part of Canada in which the person so served may reside, being out of the jurisdiction of the Court transmitting such certificate, and the Court to which such certificate is sent, shall thereupon proceed against and punish such person so having made default, in like manner as they might have done if such person had neglected or refused to appear to a writ of subpœna or other similar process issued out of such last mentioned Court.

If expenses paid or tendered.

9. No such certificate of default shall be transmitted by any Court, nor shall any person be punished for neglect or refusal to attend any trial or *enquête* or examination of witnesses, in obedience to any such subpœna or other similar process, unless it be made to appear to the Court transmitting and also to the Court receiving such certificate, that a reasonable and sufficient sum of money, according to the rate *per diem* and per mile allowed to witnesses by the law and practice of the Superior Courts of Law

within the jurisdiction of which such person was found, to defray the expenses of coming and attending to give evidence and of returning from giving evidence, had been tendered to such person at the time when the writ of subpoena, or other similar process was served upon him.

10. The service of such writs of subpoena or other similar process, in Lower Canada, shall be proved by the certificate of a Bailiff within the jurisdiction where the service has been made, under his oath of office, and such service in Upper Canada by the affidavit of service endorsed on or annexed to such writ by the person who served the same. How service proved.

11. The costs of the attendance of any such witness shall not be taxed against the adverse party to such suit, beyond the amount that would have been allowed on a commission *rogatoire*, or to examine witnesses, unless the Court or Judge before whom such trial or *enquête* or examination of witnesses is had, so orders. Costs of attendance provided for.

13. Nothing herein contained shall affect the power of any Court to issue a commission for the examination of witnesses out of its jurisdiction, nor affect the admissibility of any evidence at any trial or proceeding, where such evidence is now by law receivable, on the ground of any witness being beyond the jurisdiction of the Court. Power to issue commissions examine witnesses pre-served.

EXAMINATION OF WITNESSES.

17. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the matter in question, without the writing being shown to him; but if it is intended to contradict him by the writing, his attention shall, before such contradictory proof is given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; and the Judge or other person presiding at any time during the trial or proceeding may require the production of the writing for his inspection, and may thereupon make such use of it for the purposes of the trial or proceeding as he may think fit. Proof of contradictory written statements.
9 Edw. VII. c. 43, s. 17.

18. If a witness upon cross-examination as to a former statement made by him relative to the matter in question, and inconsistent with his present testimony does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof is given the circumstances of the supposed statement sufficient to designate the particular occasion shall be mentioned to the witness, and he shall be asked whether or not he did make such statement. Proof of contradictory oral statements.
9 Edw. VII. c. 43, s. 18.

19.—(1) A witness may be asked whether he has been convicted of any crime, and upon being so asked, if he either denies the fact or refuses to answer, the conviction may be proved; and a certificate containing the substance and effect only, omitting the formal part, of the charge and of the conviction, purporting to be signed by the officer having the custody of the records of the court at which the offender was Proof of previous conviction of a witness.

Certificate of conviction.

convicted, or by the deputy of the officer, shall, upon proof of the identity of the witness as such convict, be sufficient evidence of the conviction, without proof of the signature or of the official character of the person appearing to have signed the certificate.

Fee for.

(2) For such certificate a fee of \$1 and no more may be demanded or taken. 9 Edw. VII. c. 43, s. 19.

How far a party may discredit his own witness.

20. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character but he may contradict him by other evidence, or if the witness in the opinion of the judge or other person presiding proves adverse such party may by leave of the judge or other person presiding prove that the witness made at some other time a statement inconsistent with his present testimony, but before such last mentioned proof is given the circumstances of the proposed statement sufficient to designate the particular occasion shall be mentioned to the witness and he shall be asked whether or not he did make such statement. 9 Edw. VII. c. 43, s. 20.

STATUTES AND PUBLIC DOCUMENTS.

Statutes, Proclamations, Orders in Council, Letters Patent, etc.

Evidence of Letters Patent.

21. Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, or of any other of His Majesty's Dominions, may be proved by the production of an exemplification thereof, or of the enrolment thereof, under the Great Seal under which the same may have issued, and such exemplification shall have the like force and effect for all purposes as the letters patent thereby exemplified, as well against His Majesty as against all other persons whomsoever. 9 Edw. VII. c. 43, s. 21.

3 and 4 Edw VI. c. 4, and 13 Eliz. c. 6.

Copies of Canadian and Provincial Statutes as evidence.

22. Copies of statutes, official gazettes, ordinances, regulations, proclamations, journals, orders, appointments to office, notices thereof and other public documents purporting to be printed by or under the authority of the Parliament of Great Britain and Ireland or of the Imperial Government or by or under the authority of the Government or of any Legislative body of any Dominion, Commonwealth, State, Province, Colony, Territory or Possession within the King's dominions, shall be admitted in evidence to prove the contents thereof. 9 Edw. VII. c. 43, s. 22.

Proclamations, Orders in Council, etc., of Government of Canada and of Provincial Governments how proved.

23. *Prima facie* evidence of a proclamation, order, regulation or appointment to office made or issued

(a) By the Governor-General or the Governor-General in Council, or other Chief Executive Officer or Administrator of the Government of Canada, or

- (b) by or under the authority of any Minister or Head of any Department of the Government of Canada or of a Provincial or Territorial Government in Canada, or
- (c) by a Lieutenant-Governor or Lieutenant-Governor in Council or other Chief Executive Officer or Administrator of Ontario or of any other Province or Territory in Canada,

may be given by the production of

- (a) a copy of the *Canada Gazette* or of the official Gazette for any Province or Territory purporting to contain a notice of such proclamation, order, regulation or appointment, or
- (b) a copy of such proclamation, order, regulation or appointment purporting to be printed by the King's Printer or by the Government Printer for the Province or Territory, or
- (c) a copy of or extract from such proclamation, order, regulation or appointment purporting to be certified to be a true copy by such Minister or Head of a Department or by the Clerk or assistant or acting Clerk of the Executive Council or by the Head of any Department of the Government of Canada or of a Provincial or Territorial Government or by his Deputy or acting Deputy. 9 Edw. VII. c. 43, s. 23.

24. An order in writing purporting to be signed by the Secretary of State of Canada, and to be written by command of the Governor-General, shall be received in evidence as the order of the Governor-General; and an order in writing purporting to be signed by the Provincial Secretary and to be written by command of the Lieutenant-Governor shall be received in evidence as the order of the Lieutenant-Governor. 9 Edw. VII. c. 43, s. 24.

Orders signed
by Secretary
of State or
Provincial
Secretary.

Official Documents.

25. Copies of proclamations and of official and other documents, notices and advertisements printed in the *Canada Gazette* or in the *Ontario Gazette*, or in the official Gazette of any Province or Territory in Canada shall be *prima facie* evidence of the originals, and of the contents thereof. 9 Edw. VII. c. 43, s. 25.

Notices in
Gazette.

26. Where the original record could be received in evidence, a copy of any official or public document in Ontario, purporting to be certified under the hand of the proper officer, or the person in whose custody such official or public document is

How public or
official docu-
ments proved.

By-laws, etc.,
of corporations.

placed, or of a document, by-law, rule, regulation or proceeding, or of any entry in any register or other book of any corporation, created by charter or statute in Ontario, purporting to be certified under the seal of the corporation, and the hand of the presiding officer or secretary thereof, shall be receivable in evidence without proof of the seal of the corporation, or of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof. 9 Edw. VII. c. 43, s. 26.

Privilege in
case of official
documents.

27. Where a document is in the official possession, custody or power of a member of the Executive Council, or of the head of a Department of the Public Service of Ontario, if the deputy head or other officer of the Department has the document in his personal possession, and is called as a witness, he shall be entitled, acting herein by the direction and on behalf of such member of the Executive Council or Head of the Department, to object to produce the document on the ground that it is privileged; and such objection may be taken by him in the same manner, and shall have the same effect, as if such member of the Executive Council or Head of the Department were personally present and made the objection. 9 Edw. VII. c. 43, s. 27.

Entries in
departmental
books to be
prima facie
evidence.

28. A copy of an entry in any book of account kept in any department of the Government of Canada or of Ontario shall be received as *prima facie* evidence of such entry, and of the matters, transactions and accounts therein recorded, if it is proved by the oath or affidavit of an officer of such department that such book was, at the time of the making of the entry, one of the ordinary books kept in such department, that the entry was apparently, and as the deponent believes, made in the usual and ordinary course of business of such department, and that such copy is a true copy thereof. 9 Edw. VII. c. 43, s. 28.

Copies of pub-
lic books or
documents
admissible in
evidence.

29.—(1) Where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, a copy thereof or extract therefrom shall be admissible in evidence if it is proved that it is an examined copy or extract, or that it purports to be signed and certified as a true copy or extract by the officer to whose custody the original has been entrusted.

Copies to be
delivered if
required.

(2) Such officer shall furnish the certified copy or extract to any person applying for the same at a reasonable time, upon his paying therefor a sum not exceeding ten cents for every folio of one hundred words. 9 Edw. VII. c. 43, s. 29.

[As to documents in Department of Lands, Forests and Mines see *The Public Lands Act*, R.S.O. c. 28, s. 30.]

Signatures of Judges, etc.

30.—(1) All Courts, Judges, Justices, Masters, Clerks of Courts, Commissioners and other officers acting judicially, shall take judicial notice of the signature of any of the Judges of any Court in Canada, in Ontario and in every other Province and Territory in Canada, where such signature is appended or attached to any decree, order, certificate, affidavit, or judicial or official document.

Judicial notice to be taken of signatures of Judges, etc.

(2) The members of the Board of Railway Commissioners of Canada and of the Ontario Railway and Municipal Board, the Mining Commissioner and the Referees appointed under *The Municipal Drainage Act* shall be deemed Judges for the purposes of this section. 9 Edw. VII. c. 43, s. 30.

Who to be deemed "Judges." Rev. Stat. c. 193.

31. No proof shall be required of the handwriting or official position of any person certifying to the truth of any copy of or extract from any proclamation, order, regulation or appointment, or to any matter or thing as to which he is by law authorized or required to certify. 9 Edw. VII. c. 43, s. 31; 1 Geo. V. c. 17, s. 29.

Proof of handwriting, when not required.

Foreign Judgments.

32. A judgment, decree or other judicial proceeding recovered, made, had or taken in the Supreme Court of Judicature or in any Court of Record in England or Ireland or in any of the Superior Courts of Law, Equity or Bankruptcy in Scotland, or in any Court of Record in Canada or in any of the Provinces or Territories in Canada, or in any British Colony or Possession, or in any Court of Record of the United States, or of any State of the United States of America, may be proved by an exemplification of the same under the seal of the Court without any proof of the authenticity of such seal or other proof whatever, in the same manner as a judgment, decree, or other judicial proceeding of the Supreme Court in Ontario may be proved by an exemplification thereof. 9 Edw. VII. c. 43, s. 32.

Foreign judgments, etc., how proved.

Notarial Documents.

33. A copy of a notarial act or instrument in writing made in Quebec, before a Notary and filed, enrolled or enregistered by such Notary, certified by a Notary or Prothonotary to be a true copy of the original thereby certified to be in his possession as such Notary or Prothonotary, shall be receivable in evidence in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved. 9 Edw. VII. c. 43, s. 33.

Copies of notarial acts in Quebec admissible.

34. The proof by such certified copy may be rebutted or set aside by proof that there is no such original, or that the

How impeached.

copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may, by the law of Quebec, be taken before a Notary, or be filed, enrolled or enregistered by a Notary. 9 Edw. VII. c. 43, s. 34.

Protests of Bills and Notes.

Effect of
protest as
evidence.

35. A protest of a bill of exchange or promissory note purporting to be under the hand of a Notary Public wherever made shall be received as *prima facie* evidence of the allegations and facts therein stated. 9 Edw. VII. c. 43, s. 35.

Effect of
certain cer-
tificates of
notaries.

36. Any note, memorandum or certificate purporting to be made by a Notary Public in Canada, in his own handwriting or to be signed by him at the foot of or embodied in any protest, or in a regular register of official acts purporting to be kept by him shall be *prima facie* evidence of the fact of notice of non-acceptance or non-payment of a bill of exchange or promissory note having been sent or delivered, at the time and in the manner stated in such note, certificate or memorandum. 9 Edw. VII. c. 43, s. 33.

Sheriff's Conveyance on Division Court Judgment.

Proving titles
under Division
Court execu-
tions.

37. In proving a title under a sheriff's conveyance based upon an execution issued from a division court it shall be sufficient to prove the judgment recovered in the division court without proof of any prior proceedings. 9 Edw. VII. c. 43, s. 37.

MISCELLANEOUS PROVISIONS.

Affidavits, etc., made out of Ontario.

Functionaries
in other
countries for
taking
affidavits.

38. Oaths, affidavits, affirmations or declarations administered, sworn, affirmed or made out of Ontario:

- (a) In England or Ireland before a Commissioner authorized to administer oaths in the Supreme Court of Judicature of England or Ireland;
- (b) In England or Ireland before a Judge of the Supreme Court of Judicature of England or Ireland;
- (c) In Scotland before a Judge of the Court of Session or the Justiciary Court of Scotland;
- (d) Before a Judge of any of the County Courts of Great Britain or Ireland, within his County;
- (e) In Great Britain or Ireland, or in any Colony of His Majesty, or in any foreign country, before the Mayor or Chief Magistrate of any City, Borough or Town corporate, certified under the common seal of such City, Borough, or Town corporate;

- (f) In any Colony belonging to the Crown of Great Britain, or any dependency thereof, or in any foreign country before a Judge of any Court of Record or of supreme jurisdiction;
- (g) In the British possessions in India, before any Magistrate or Collector certified to have been such under the hand of the Governor of such possession;
- (h) In Quebec, before a Judge or Prothonotary of the Superior Court or Clerk of the Circuit Court;
- (i) In any foreign place, before any Consul, Vice-Consul, or Consular Agent of His Majesty exercising his functions;
- (j) Before a Notary Public and certified under his hand and official seal;
- (k) Or before a Commissioner authorized by the laws of Ontario to take such affidavits;

shall be as valid and effectual and shall be of like force and effect to all intents and purposes as if such oath, affidavit, affirmation or declaration had been administered, sworn, affirmed or made in Ontario before a Commissioner for taking affidavits therein, or other competent authority of the like nature. 9 Edw. VII. c. 43, s. 38.

39. Any document purporting to have affixed, impressed or subscribed thereon or thereto the signature of such Judge or Commissioner, or the signature and official seal of such Notary Public, or Prothonotary, or the seal of the Corporation and the signature of such Mayor or Chief Magistrate or Governor as aforesaid, or the seal and signature of such Consul, Vice-Consul or Consular Agent in testimony of such oath, affidavit, affirmation or declaration having been administered, sworn, affirmed or made by or before him, or for any other purpose authorized by this Act, shall be admitted in evidence without proof of such signature, or seal and signature, being the signature or the seal and signature of the person whose signature or seal and signature the same purport to be, or of the official character of such person. 9 Edw. VII. c. 43, s. 39.

Proof of signature and seal dispensed with.

Formal Defects in Affidavits.

40. No informality in the heading, or other formal requisites to any affidavit, declaration or affirmation, made or taken before a Commissioner or other person authorized to take affidavits under *The Commissioners for taking Affidavits Act*, or under this Act, shall be any objection to its reception in evidence, if the Court or Judge before whom it is tendered thinks proper to receive it. 9 Edw. VII. c. 43, s. 40.

Formal defects, when not to vitiate.

Rev. Stat. c. 77.

Depositions.

Admissibility
of copies of
depositions.

41. Where an examination or deposition of a party or witness has been taken before a Judge or other officer or person appointed to take the same, copies of the examination or deposition certified under the hand of the Judge, officer or other person taking the same, shall, without proof of the signature, be received and read in evidence, saving all just exceptions. 9 Edw. VII. c. 43, s. 41.

Proof of Wills.

Effect of
probate, etc.,
as evidence of
will, etc.

42. In order to establish a devise or other testamentary disposition of or affecting real estate, probate of the will or letters of administration with the will annexed containing such devise or disposition, or a copy thereof, under the seal of the Surrogate Court granting the same, or under the seal of the Supreme Court, where the probate or letters of administration were granted by the former court of probate for Upper Canada, shall be *prima facie* evidence of the will, and of its validity and contents. 9 Edw. VII. c. 43, s. 42.

Proof in the
case of will of
real estate
filed in courts
in other Bri-
tish posses-
sions.

43. Where a person dies in any of His Majesty's possessions out of Ontario having made a will sufficient to pass real estate in Ontario, purporting to devise, charge or affect real estate in Ontario, the party desiring to establish any such disposition, after giving one month's notice to the opposite party to the proceeding of his intention so to do, may produce and file the probate of the will or letters of administration with the will annexed or a certified copy thereof under the seal of the Court which granted the same with a certificate of the Judge, Registrar, or Clerk of such Court that the original will is filed and remains in the Court and purports to have been executed before two witnesses, and such probate or letters of administration or certified copy with such certificate shall, unless the Court otherwise orders, be *prima facie* evidence of the will and of its validity and contents. 9 Edw. VII. c. 43, s. 43.

Certificate.

Effect of
certificate.

44. The production of the certificate, in the last preceding section mentioned, shall be sufficient *prima facie* evidence of the facts therein stated, and of the authority of the Judge, Registrar or Clerk, without proof of his appointment, authority or signature. 9 Edw. VII. c. 43, s. 44.

Copies of Registered Instruments.

Meaning of
"instrument."

Rev. Stat.
c 124.

Registered
instrument
as evidence.

45. The word "instrument" in the next succeeding two sections shall have the meaning assigned to that word in section 2 of *The Registry Act*. 9 Edw. VII. c. 43, s. 45.

46. A copy of an instrument or memorial certified under the hand and seal of office of the Registrar, Master of Titles, or Local Master of Titles, in whose office the same is deposited,

filed, kept or registered, to be a true copy shall be *prima facie* evidence of the original, except in the cases provided for in section 47. 9 Edw. VII. c. 43, s. 46.

[*As to effect of production of an original duplicate the registration of which is certified see The Registry Act, Rev. Stat. c. 124, s. 50.*]

47. Where it would be necessary to produce and prove an instrument or memorial which has been so deposited, filed, kept or registered in order to establish such instrument or memorial and the contents thereof, the party intending to prove the same may give notice to the opposite party ten days at least before the trial, or other proceeding in which the proof is intended to be adduced, that he intends at the trial or other proceeding to give in evidence, as proof of the instrument or memorial a copy thereof certified by the Registrar, Master of Titles, or Local Master of Titles, under his hand and seal of office, and in every such case the copy so certified shall be sufficient evidence of the instrument or memorial and of its validity and contents, unless the party receiving the notice, within four days after such receipt, gives notice that he disputes its validity, in which case the costs of producing and proving it may be ordered to be paid by any or either of the parties as may be deemed just. 9 Edw. VII. c. 43, s. 47.

When certified copies of registered instruments may be used.

Exception.

48.—(1) Where a public officer produces upon a subpoena an original document, it shall not be deposited in court, unless otherwise ordered, but if the document or a copy is needed for subsequent reference or use, a copy thereof or of so much thereof as may be deemed necessary, certified under the hand of the officer producing the document or otherwise proved, shall be filed as an exhibit in the place of the original; and the officer shall be entitled to receive in addition to his ordinary fees, the fees for any certified copy, to be paid to him before it is delivered or filed.

Filing copies of official documents.

(2) Where an order is made that the original be retained, the order shall be delivered to the public officer, and the exhibit shall be retained in court and filed. 9 Edw. VII. c. 43, s. 48.

When original to be retained.

Copies of other written Instruments.

49.—(1) A party intending to prove the original of a telegram, letter, shipping bill, bill of lading, delivery order, receipt, account, or other written instrument used in business or other transactions, may give notice to the opposite party, ten days at least before the trial or other proceeding in which the proof is intended to be adduced, that he intends to give in evidence as proof of the contents a writing purporting to be a copy of the documents, and in the notice shall name some convenient time and place for the inspection thereof.

Proof of certain documents.

Inspection.

(2) Such copy may then be inspected by the opposite party, and shall without further proof be sufficient evidence of the contents of the original document, and be accepted and taken in lieu of the original, unless the party receiving the notice within four days after the time mentioned for such inspection gives notice that he intends to dispute the correctness or genuineness of the copy at the trial or proceeding, and to require proof of the original; and the costs attending any production or proof of the original document shall be in the discretion of the Court. 9 Edw. VII. c. 43, s. 49.

Costs.

Evidence for Foreign Tribunals.

Examination
of witnesses in
relation to
matter pend-
ing before a
foreign tri-
bunal.

50.—(1) Where it is made to appear to the High Court Division or a Judge thereof, or to a Judge of a County or District Court, that any Court or tribunal of competent jurisdiction in a foreign country has duly authorized, by commission, order or other process, the obtaining of the testimony, in or in relation to any action, suit or proceeding pending in or before such foreign Court or tribunal, of a witness out of the jurisdiction thereof and within the jurisdiction of the Court or Judge so applied to, such Court or Judge may order the examination of such witness before the person appointed, and in the manner and form directed by the commission, order or other process; and may, by the same or by a subsequent order, command the attendance of any person named therein for the purpose of being examined, or the production of any writing or other document or thing mentioned in the order; and may give all such directions as to the time and place of the examination, and all other matters connected therewith as may seem proper; and the order may be enforced, and any disobedience thereto punished, in like manner as in case of an order made by the same Court or Judge in an action pending in such Court or before such Judge.

Payment of
expenses of
witness.

(2) A person whose attendance is so ordered shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in the High Court Division.

Right of re-
fusal to
answer ques-
tions and to
produce docu-
ments.

(3) A person examined under such commission, order or other process, shall have the like right to object to answer questions tending to criminate himself, and to refuse to answer any questions which, in an action pending in the Court by which or by a Judge whereof or before the Judge by whom the order for examination was made, the witness would be entitled to object or to refuse to answer; and no person shall be compelled to produce at the examination, any writing, document or thing which he would not be compellable to produce at the trial of such an action.

Administra-
tion of oath.

(4) Where the commission, order or other process or the instructions of the Court accompanying the same, direct that the person to be examined shall be sworn or shall affirm the

person so appointed shall have authority to administer the oath to him or take his affirmation. 9 Edw. VII. c. 43, s. 50.

51. It shall not be necessary to prove, by the attesting witness, an instrument to the validity of which attestation is not requisite. 9 Edw. VII. c. 43, s. 51. Where no attestation required.

52. Comparison of a disputed writing with any writing proved to the satisfaction of the Court to be genuine, shall be permitted to be made by a witness; and such writings and the evidence of witnesses respecting the same, may be submitted to the Court or jury as evidence of the genuineness or otherwise of the writing in dispute. 9 Edw. VII. c. 43, s. 52. Comparison of disputed writing with genuine.

53. Where a document is received in evidence the Court admitting the same may direct that it be impounded and kept in such custody for such period and subject to such conditions as may seem proper, or until the further order of the Court or of the High Court Division or a Judge thereof or of a County or District Court, as the case may be. 9 Edw. VII. c. 43, s. 53. When instruments offered in evidence may be impounded.

54. It shall not be necessary in an action to produce any evidence which, by section 2 of *The Vendors and Purchasers Act*, is dispensed with as between vendor and purchaser, and the evidence declared to be sufficient as between vendor and purchaser shall be *prima facie* sufficient for the purposes of the action. 9 Edw. VII. c. 43, s. 54. Evidence dispensed with under Rev. Stat. c. 122.

CHAPTER 77.

An Act respecting Commissioners for taking Affidavits.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Commissioners for taking Affidavits Act*. 9 Edw. VII. c. 44, s. 1.

Interpretation. **2.** In this Act,

"County," "County" shall include a Provisional County and a Provisional Judicial District. 9 Edw. VII. c. 44, s. 2.

COMMISSIONERS WITHIN ONTARIO.

Appointment of Commissioners for taking affidavits in all Courts. **3.**—(1) The Judges of the Supreme Court or any two of them may issue, under the seal of the Court, commissions empowering such and so many persons as they think fit and necessary in every county to take and receive such affidavit as any person desires to make in or concerning any action, cause or matter depending in or in any wise concerning any of the proceedings in the Courts of Ontario.

Solicitors to be *ex-officio* commissioners. (2) Every Solicitor of the Supreme Court shall be *ex-officio* a Commissioner for taking affidavits in and for every county in Ontario. 9 Edw. VII. c. 44, s. 3.

(See also *The Interpretation Act*, R.S.O. c. 1, s. 23 (3).)

County and District Courts. **4.** The Judges and the Clerks of the County and District Courts may take all affidavits required to be taken in their respective Courts. 9 Edw. VII. c. 44, s. 4.

Commissioner to be an officer of the Court. **5.** Every Commissioner for taking affidavits shall be deemed to be an officer of the Supreme Court. 9 Edw. VII. c. 44, s. 5.

Case of separation of counties. **6.** Where a union of counties is dissolved or a county is separated from a union of counties every Commissioner appointed for the union may exercise, within the county in which he resides at the time of the dissolution or separation or within the counties of the union which remain thereafter united and in either or which he so resides, the same powers as if he had received his commission or appointment for such county or remaining counties within which he so resides and

shall not have or exercise such powers under his commission otherwise or elsewhere. 9 Edw. VII. c. 44, s. 6.

COMMISSIONERS OUT OF ONTARIO.

7.—(1) The Lieutenant-Governor may, by commission, Appointment by Lieutenant-Governor of commissioners for taking affidavits without Ontario. empower such and so many persons as he thinks fit and necessary to administer oaths and to take affidavits without Ontario in or concerning actions, causes or matters depending in or in anywise concerning any proceeding to be had in any Court in Ontario.

(2) A Commissioner so appointed shall be styled “A Style of commissioners. Commissioner for taking affidavits in and for the Courts in Ontario.” 9 Edw. VII. c. 44, s. 7.

8. The Judges of the Supreme Court or any two of them Appointment by Judges of commissioners in any Province. may issue under the seal of the Court commissions empowering such and so many persons as they think fit and necessary to administer oaths and to take affidavits in any Province or Territory in Canada, in or concerning actions, causes or matters depending in or in anywise concerning any proceeding to be had in any Court in Ontario. 9 Edw. VII. c. 44, s. 8.

AUTHORITY OF COMMISSIONERS, ETC.

9. Every Commissioner may take any affidavit in any- Extent of commissioner's authority. wise concerning any proceeding to be had in any Court in Ontario, or before a Judge of any such Court, and in or concerning any application or matter made or pending before any Judge of any Court in Ontario which by any statute such Judge is authorized to hear and determine, or in which he is authorized to make an order, although the application or matter be not made or depending in any Court. 9 Edw. VII. c. 44, s. 9.

10. Every Commissioner shall have power to take declarations in all cases in which declarations may be taken, or may be required under any Act in force in Ontario. Commissioners may take statutory declarations. 9 Edw. VII. c. 44, s. 10.

REVOCATION OF COMMISSIONS.

11. The Judges of the Supreme Court or any two of them Revocation of commission. may revoke the commission of any Commissioner whether the commission was issued by the Judges of such Court, or of any Court formerly authorized to issue commissions, and such revocation shall operate as a revocation for all purposes. 9 Edw. VII. c. 44, s. 11.

[See *The Registry Act*, R.S.O. c. 124, and *The Notaries Act*, R.S.O. c. 160.]

CHAPTER 78.

An Act respecting the Costs of Distress or Seizure of Chattels.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Costs of Distress Act*.
9 Edw. VII. c. 45, s. 1.

Tariff of costs where sum demanded does not exceed \$80.

2.—(1) No person making distress for rent or for a penalty where the sum demanded and due, in respect of the rent or penalty, does not exceed \$80, and no person employed in making the distress, or doing any act in the course of the distress, or for carrying the same into effect, shall levy, take or receive any costs in respect of the distress other than such as are set forth in Schedule 1.

Where sum demanded exceeds \$80.

(2) Where the sum demanded and due exceeds \$80 no charges shall be made for or in respect of costs or expenses, except such as are set forth in Schedule 2. 9 Edw. VII. c. 45, s. 2.

Costs in respect of seizure of exempted goods.

3. No costs shall be levied, taken or received for or in respect of exempted goods when they may not be lawfully sold, and when sold no greater sum in all than \$2 and actual and necessary payments for possession money shall be levied, taken or received for or in respect of costs and expenses of sale of such exempted goods. 9 Edw. VII. c. 45, s. 3.

Tariff of costs under chattel mortgage.

4. No person making a seizure or sale of goods for default in payment of the principal money or interest secured by a chattel mortgage shall levy, take or receive any greater or other fees or costs than those set forth in Schedule 3. 9 Edw. VII. c. 45, s. 4.

No charge for anything not done.

5. No person shall make any charge for anything mentioned in such schedule unless it has been actually done. 9 Edw. VII. c. 45, s. 5.

Penalty for contravention.

6. If a person offends against any of the provisions of the preceding sections the person aggrieved may apply to a justice of the peace for the county, city or town where the offence was committed for redress of the grievance; whereupon the justice shall summon the person complained of to appear before him at a reasonable time to be fixed in the summons,

and the justice shall examine into and hear the complaint and defence; and, if it appears that the person complained of has so offended, the justice shall order and adjudge treble the amount of the money unlawfully taken and full costs to be paid by the offender to the party aggrieved. 9 Edw. VII. c. 45, s. 6.

7. In case of non-payment of the money or costs so adjudged the justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the person convicted, rendering to him the overplus, if any. 9 Edw. VII. c. 45, s. 7. How penalty to be levied.

8. Where no sufficient distress can be had the justice shall, by warrant under his hand and seal, commit the person convicted to the common gaol for such time not exceeding three months as the justice may deem just, unless the order is sooner satisfied. 9 Edw. VII. c. 45, s. 8. Commitment.

9. Where the justice finds that the complaint is not well founded he may order and adjudge costs, not exceeding \$4, to be paid by the complainant to the person complained against, and the order shall be enforced in the manner hereinbefore directed with respect to an order in favour of a complainant. 9 Edw. VII. c. 45, s. 9. Costs where complaint unfounded. How enforced.

10. The order may be according to the appropriate form in Schedule 4, and may be proved before any court by proof of the signature of the justice thereto. 9 Edw. VII. c. 45, s. 10. Form of order.

11. Except as provided in section 9, the costs and fees of and incidental to proceedings before a justice under this Act shall be according to the scale of fees established by law in proceedings had by and before justices. 9 Edw. VII. c. 45, s. 11. Costs and fees on proceedings before justice.

12. The justice, at the request of either party, shall summon and examine witnesses, and administer the oath to them touching the complaint or defence. 9 Edw. VII. c. 45, s. 12. Justice may summon witnesses.

13. Where a person so summoned neglects to obey the summons without reasonable or lawful excuse, or refuses to be examined, he shall forfeit a sum not exceeding \$8, to be adjudged, levied and paid in such manner, and by such means, and with such power of commitment, as hereinbefore directed with respect to an order in favour of a complainant, except as regards the form thereof, which may be as the justice thinks fit. 9 Edw. VII. c. 45, s. 13. Penalty for disobeying.

14. Nothing herein contained shall empower the justice to make an order against the person for whose benefit the distress, seizure or sale was made, unless he personally levied the Liability of person benefited.

distress or personally made the seizure or sale. 9 Edw. VII. c. 45, s. 14.

Right of action unaffected.

15. No person aggrieved by a seizure or sale of goods under a chattel mortgage or by a distress for rent or for a penalty, or by any act done or proceeding had in the course thereof, or by any costs or expenses levied upon him in respect of the same, shall be barred from any action or remedy which he would have had if this Act had not been passed, except so far as any complaint preferred under this Act has been determined by the order of a justice. 9 Edw. VII. c. 45, s. 15.

Furnishing statement of demand and costs.

16.—(1) A person who makes a distress shall give a statement in writing of the demand, and of all the costs and expenses of the distress, signed by him, to the person on whose goods the distress is made, and a person who makes a seizure under a chattel mortgage shall give to the person in possession of the goods seized a statement in writing signed by him of the demand and of the costs charged in respect of the seizure and subsequent proceedings.

Taxation of costs of distress.

(2) The person whose goods are distrained or seized, or the person authorizing the distress or seizure, or any other person interested, upon giving two days' notice in writing, may have the costs and expenses of the bailiff or other person making the distress or seizure taxed by the clerk of the division court within whose division the same was made.

Furnishing bill of costs to clerk for taxation.

(3) The bailiff or person making the distress or seizure shall furnish the clerk with a statement of his costs and expenses for taxation at the time mentioned in the notice, or at such other time as the clerk may direct, and in default of his so doing he shall not be entitled to any costs or expenses.

Duty of clerk on taxation.

(4) The clerk upon the taxation shall, amongst other things, consider the reasonableness of any charges for removal and keeping possession of the goods, and for advertising, or any sums alleged to have been paid therefor, and may examine either party on oath, touching the same, and the person requiring the taxation shall pay the clerk a fee of twenty-five cents therefor.

Revision of taxation.

(5) Where that portion of the costs or expenses in dispute amounts to \$10 or upwards either party, on giving two days' notice, may have the taxation revised by the Clerk of the County or District Court of the county or district within which the distress or seizure was made who shall be paid a fee of fifty cents for such revision by the party appealing, and such fee may, in the discretion of the Clerk, be deducted from or added to the bill as finally taxed by him. 9 Edw. VII. c. 45, s. 16.

SCHEDULE 1.

(Section 2 (1).)

COSTS ON DISTRESS WHERE SUM DEMANDED AND DUE DOES NOT
EXCEED \$80.

1. Levying distress	\$1 00
2. One man keeping possession, per diem	75
3. Appraisement, whether by one appraiser or more— two cents in the dollar on the value of the goods;	
4. If any printed advertisement, not to exceed in all	1 00
5. Catalogues, sale and commission, and delivery of goods— five cents in the dollar on the net proceeds of the sale.	
6. Where the amount due is satisfied in whole or in part after seizure and before sale three cents in the dol- lar on the amount realized.	

9 Edw. VII. c. 45, Schedule 1.

SCHEDULE 2.

(Section 2 (2).)

COST ON DISTRESS, WHERE SUM DEMANDED AND DUE EXCEEDS \$80.

1. Levying distress	\$1 00
2. One man keeping possession, per diem	1 00
3. Appraisement whether by one appraiser or more, two cents in the dollar on the value of the goods.	
4. Advertisement when reasonably published in a news- paper, the actual outlay not exceeding	5 00
5. If any printed advertisement otherwise than in a news- paper, the actual outlay not exceeding	3 00
6. The actual expenses reasonably incurred in removing the goods distrained or part thereof when such removal is necessary.	
7. Catalogues, sale and commission and delivery of goods, five cents in the dollar on the net proceeds of the sale, up to \$100, and where the proceeds of the sale exceed \$100 in addition thereto two and a half per cent. on the excess over \$100.	
8. Where the amount due is satisfied in whole or in part after seizure and before sale, three cents in the dol- lar on the amount so realized.	

9 Edw. VII. c. 45, Schedule 2.

SCHEDULE 3.

(Section 4.)

COSTS ON SEIZURE UNDER CHATTEL MORTGAGES.

1. Making seizure where amount does not exceed \$80	\$1 00
2. Making seizure where amount exceeds \$80	1 50
3. One man keeping possession, per diem	1 00
4. Where the amount exceeds \$80, advertisement when reasonably published in a newspaper, the actual outlay not exceeding	5 00
5. If any printed advertisement otherwise than in a newspaper (where the amount does not exceed \$80) the actual outlay not exceeding	1 50
and where the amount exceeds \$80 the actual outlay not exceeding	3 00
6. Catalogues, sale and commission and delivery of goods, five cents in the dollar on the net proceeds of the sale, up to \$100, and where the proceeds of sale exceed \$100 in addition thereto two and one-half per cent. on the excess over \$100.	
7. Where amount is paid before sale, a commission of two cents in the dollar, and the amount actually disbursed in cartage not to exceed	2 00

9 Edw. VII. c. 45, Schedule 3.

SCHEDULE 4.

(Section 10.)

FORM 1.

FORM OF THE ORDER OF THE JUSTICE BEFORE WHOM COMPLAINT IS
PREFERRED WHEN THE ORDER AND JUDGMENT IS IN FAVOUR OF
THE COMPLAINANT.

In the matter of the complaint of *A. B.* against *C. D.* for a breach of the provisions of "*The Costs of Distress Act*," I, *E. F.*, a Justice of the Peace for the _____, do order and adjudge that the said *C. D.* shall pay to the said *A. B.* the sum of _____, as a compensation and satisfaction for unlawful charges and costs levied and taken from the said *A. B.*, under a distress for (or as the case may be), and the further sum of _____ for costs.

(Signed)

E. F.

9 Edw. VII. c. 45, Schedule 4, Form 1.

FORM 2.

FORM OF THE ORDER OF THE JUSTICE WHEN HE DISMISSES THE COMPLAINT.

In the matter of the complaint of *A. B.* against *C. D.*, for a breach of the provisions of "*The Costs of Distress Act*," I, *E. F.*, a Justice of the Peace for the _____, do order and adjudge that the complaint of the said *A. B.* is unfounded; (if costs are given add, and I do further order and adjudge that the said *A. B.* shall pay to the said *C. D.* the sum of _____ for costs).

(Signed)

E. F.

9 Edw. VII. c. 45, Schedule 4, Form 2.

CHAPTER 79.

An Act respecting the Enforcement of Judges' Orders in matters not in Court.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Judges' Orders Enforcement Act*. 9 Edw. VII. c. 46, s. 1.

2. Where jurisdiction is given to a Judge as *persona designata*, and no other mode of exercising it is prescribed, he shall have jurisdiction as a Judge of the Court to which he belongs, and the same jurisdiction for enforcing his orders, as to proceedings generally, as to costs and otherwise as in matters under his ordinary jurisdiction as a Judge of such Court. 9 Edw. VII. c. 46, s. 2.

3.—(1) Where made by a Judge of the Supreme Court the order may be filed in the Central Office of the Supreme Court, or with a local registrar, deputy registrar or deputy clerk of the Crown, and where made by a Judge of a County or District Court the order may be filed with the clerk of the court.

(2) Upon an order being so filed it shall become an order of the Supreme Court or of the County or District Court, as the case may be, and may be enforced in the same manner and by the like process as if the order had been made by such Court.

(3) The like fees shall be payable as are payable upon the issue of an order made by the Judge in the exercise of his ordinary jurisdiction.

(4) The order shall be entered in the same manner as a judgment of the Court in which the order is so filed.

4. There shall be no appeal from such order unless an appeal is expressly authorized by the statute giving the jurisdiction or unless special leave is granted by the Judge making the order or by a Judge of the Supreme Court, in which case the appeal shall be to a Divisional Court whose decision shall be final.

CHAPTER 80.

An Act respecting Execution.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Execution Act*. 9 Edw. VII. c. 47, s. 1.

Interpretation. **2.** In this Act,

“Execution.” (a) “Execution” shall include a writ of *fiery facias* and every subsequent writ for giving effect thereto.

“Sheriff.” (b) “Sheriff” shall include any officer to whom an execution is directed. 9 Edw. VII. c. 47, s. 2.

EXEMPTION.

Chattels exempt from seizure. **3.** The following chattels shall be exempt from seizure under any writ issued out of any Court, namely:

Bedding. (a) The beds, bedding and bedsteads (including cradles) in ordinary use by the debtor and his family;

Apparel. (b) The necessary and ordinary wearing apparel of the debtor and his family;

Furniture. (c) One cooking stove with pipes and furnishings, one other heating stove with pipes, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs and a shovel, one coal scuttle, one lamp, one table, six chairs, one washstand with furnishings, six towels, one looking glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one broom, twelve knives, twelve forks, twelve plates, twelve tea cups, twelve saucers, one sugar basin, one milk jug, one tea pot, twelve spoons, two pails, one wash tub, one scrubbing brush, one blacking brush, one wash board, three smoothing irons, all spinning wheels and weaving looms in domestic use, one sewing machine and attachments in domestic use, thirty volumes of books, one axe, one saw, one gun, six traps, and such fishing nets and seines as are in

common use, the articles in this subdivision enumerated not exceeding in value \$150;

- (d) All necessary fuel, meat, fish, flour and vegetables, Fuel and provisions. actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value \$40;
- (e) One cow, six sheep, four hogs, and twelve hens, in Animals. all not exceeding the value of \$100, and food therefor for thirty days, and one dog;
- (f) Tools and implements of, or chattels ordinarily used Tools. in the debtor's occupation, to the value of \$100; but if a specific article claimed as exempt be of Exempted article valued at over \$100. a value greater than \$100 and there are not other goods sufficient to satisfy the writ such article may be sold by the Sheriff who shall pay \$100 to the debtor out of the net proceeds, but no sale of such article shall take place unless the amount bid therefor shall exceed \$100 and the cost of sale in addition thereto;
- (g) Fifteen hives of bees. 9 Edw. VII. c. 47, s. 3. Bees.

4. The debtor may, in lieu of tools and implements of or Right of debtor to part proceeds of sale of imple- chattels ordinarily used in his occupation referred to in clause (f) of section 3, elect to receive the proceeds of the sale thereof up to \$100, in which case the officer executing the writ shall pay the net proceeds of the sale if the same do not exceed \$100, or, if the same exceed \$100, shall pay that sum to the debtor in satisfaction of the debtor's right to exemption under clause (f). 9 Edw. VII. c. 47, s. 4.

5. The sum to which a debtor is entitled, under clause (f) Money derived from sale of exempted goods. of section 3 or under section 4, shall be exempt from attachment or seizure at the instance of a creditor. 9 Edw. VII. c. 47, s. 5.

6. Chattels exempt from seizure shall, after the death of Disposal of exempted goods after death of the debtor. the debtor, be exempt from the claims of his creditors, and his widow shall be entitled to retain them for the benefit of himself and his family, or, if there is no widow, the family of the debtor shall be entitled to them. 9 Edw. VII. c. 47, s. 6.

7. The debtor, his widow or family, or, in the case of Right of selection. infants, their guardian, may select out of any larger number the chattels exempt from seizure. 9 Edw. VII. c. 47, s. 7.

8. Nothing herein shall exempt any article enumerated Articles for which debt incurred. in clauses (c) to (g) of section 3 from seizure to satisfy a debt contracted for such article. 9 Edw. VII. c. 47, s. 8.

Sheriff may sell any lands of execution debtor, including those held in trust for him.

9. The sheriff to whom a writ of execution against lands is delivered for execution may seize and sell thereunder the lands of the execution debtor, including any lands whereof any other person is seized or possessed in trust for the execution debtor. 3-4 Geo. V. c. 18, s. 17.

WRITS AGAINST LANDS AND GOODS.

From what date binding.

Rev. Stat. c. 126.

Rev. Stat. c. 126.

10.—(1) Subject to the provisions of *The Land Titles Act*, a writ of execution shall bind the goods and lands against which it is issued from the time of the delivery thereof to the Sheriff for execution, but subject to the provisions of *The Bills of Sale and Chattel Mortgage Act* no writ of execution against goods shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration unless such person had, at the time when he acquired his title, notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to the Sheriff and remains in his hands unexecuted.

Endorsement.

(2) The Sheriff shall, upon the receipt of the writ and without fee, endorse thereon the day of the year, the month, the hour and the minute when the same was received.

Exception.

(3) Subsection 1 shall not apply to an execution against goods issued out of a division court, which shall bind only from the time of the seizure. 9 Edw. VII. c. 47, s. 9; 1 Geo. V. c. 17, s. 34 (1), (5).

Liability of land to execution. Rev. Stat. c. 56.

11. Subject to the provisions of *The Judicature Act* and Rules of Court land and other hereditaments and real estate, belonging to any person indebted, shall be liable to and chargeable with all just debts, duties and demands of what nature or kind soever, owing by any such person to His Majesty or to any of his subjects, and shall be assets for the satisfaction thereof, and shall be subject to the like remedies, proceedings and process for seizing, selling or disposing of the same towards the satisfaction of such debts, duties and demands, and in like manner as personal estate is seized, sold or disposed of. 1 Geo. V. c. 17, s. 34 (6).

SEIZURE OF CERTAIN INTERESTS UNDER EXECUTION AGAINST GOODS.

Shares and dividends and equitable interests therein.

12. Shares and dividends, and any equitable or other right, property, interest or equity of redemption in or in respect of shares or dividends in an incorporated bank or an incorporated company having transferable shares shall be deemed to be personal property found in the place where notice of the seizure thereof is served, and may be seized under execution and may be sold thereunder in like manner as other personal property. 9 Edw. VII. c. 47, s. 10.

13.—(1) The Sheriff on being informed on behalf of the execution creditor that the execution debtor has such shares, and on being required to seize the same, shall forthwith serve a copy of the execution on the bank or company with a notice that all the shares of the execution debtor are seized thereunder; and from the time of service the seizure shall be deemed to be made and no transfer of the shares by the execution debtor shall be valid unless and until the seizure has been discharged; and every seizure and sale made under the execution shall include all dividends, premiums, bonuses or other pecuniary profits upon the shares seized, and the same shall not, after notice as aforesaid, be paid by the bank or company to any one except the person to whom the shares have been sold.

Notice of seizure.

Duty of bank or company.

(2) Such seizure may be made and notice given by the Sheriff where the bank or company has within his bailiwick a place at which service of process may be made. 9 Edw. VII. c. 47, s. 11.

How seizure made.

14. If the bank or company has more than one place where service of process may be made, and there is some place where transfers of shares may be notified to and entered by the bank or company, so as to be valid as regards the bank or company, or where dividends or profits as aforesaid on stock may be paid other than the place where service of such notice has been made, the notice shall not affect any transfer or payment of dividends or profits duly made and entered at any such other place, so as to subject the bank or company to pay twice, or so as to affect the rights of any *bona fide* purchaser, until after the expiration of a period from the time of service sufficient for the transmission of notice of service by post from the place where it has been made to such other place, which notice it shall be the duty of the bank or company to so transmit. 9 Edw. VII. c. 47, s. 12.

Provisions for the case of more than one place of service.

15. Where any such share is sold the Sheriff shall within ten days after the sale serve upon the bank or company at some place where service of process may be made a copy of the execution, with his certificate endorsed thereon certifying the sale and the name of the purchaser who shall have the same rights and be under the same obligations as if he had purchased the share from the execution debtor at the time of the service of notice under section 13. 9 Edw. VII. c. 47, s. 13.

Mode of proceeding after sale.

16. Nothing in this Act shall affect any remedy which the execution creditor might, without this Act, have had against any such share or the dividends, premiums, bonuses or other pecuniary profits in respect thereof; and the provisions of the next preceding four sections shall apply to such remedy in so far as they can be applied thereto. 9 Edw. VII. c. 47, s. 14.

Saving of all other remedies.

Procedure for
sale of
equitable
interests.

17. The procedure for seizure and sale in the case of an equitable or other right, property, interest or equity of redemption in or in respect of any share shall be the same as hereinbefore provided in the case of shares and dividends, and the same shall be held to be personal property found in the place where notice of the seizure is served. 9 Edw. VII. c. 47, s. 15.

Rights under
patent of
invention.

18.—(1) All rights under letters patent of invention and any equitable or other right, property, interest or equity of redemption therein shall be deemed to be personal property and may be seized and sold under execution in like manner as other personal property.

How seizable.

(2) Such seizure and sale may be made by the Sheriff of any county or district having in his hands to be executed an execution against the property of the debtor who is the owner of or interested in the letters patent.

Notice of
seizure.

(3) Notice of the seizure shall forthwith be given to the Patent Office and the interest of the debtor shall be bound from the time when the notice is received there. 9 Edw. VII. c. 47, s. 16.

Equitable
rights in
chattels.

19. The Sheriff may seize and sell any equitable or other right, property, interest or equity of redemption in or in respect of any goods, chattels or personal property, including leasehold interests in any land of the execution debtor, and, except where the sale is under an execution against goods issued out of a division court, the sale shall convey whatever equitable or other right, property, interest or equity of redemption he had or was entitled to in or in respect of the goods, chattels or personal property at the time of the delivery of the execution to the Sheriff for execution, and where the sale is under an execution against goods issued out of a division court the sale shall convey whatever equitable or other right, property, interest or equity of redemption the debtor had or was entitled to in or in respect of the goods, chattels or personal property at the time of the seizure. 9 Edw. VII. c. 47, s. 17.

Money
and securities
for money.

20. The Sheriff shall seize any money or bank-notes, including any surplus of a former execution against the debtor, and any cheques, bills of exchange, promissory notes, bonds, mortgages, specialties or other securities for money belonging to the person against whom the execution has been issued; and, subject to the provisions of *The Creditors' Relief Act*, shall pay or deliver to the party who sued out the execution the money or bank notes so seized, or a sufficient part thereof, and hold such cheques, bills of exchange, promissory notes, bonds, mortgages, specialties or other securities for money as security for the amount directed to

Rev. Stat.
c. 81.

be levied, or so much thereof as has not been otherwise levied or raised; and the Sheriff may sue in his own name for the recovery of the sums secured thereby. 9 Edw. VII. c. 47, s. 18; 1 Geo. V. c. 17, s. 34 (3). Sheriff's right to sue.

[As to proceedings under Division Court Executions, see also the Division Courts Act, R.S.O. c. 63.]

21. The payment to the Sheriff by the person liable on such cheque, bill of exchange, promissory note, bond, mortgage, specialty or other security, with or without suit, or recovery from him, shall discharge him to the extent of such payment or recovery from his liability thereon. 9 Edw. VII. c. 47, s. 19; 1 Geo. V. c. 17, s. 34 (4). Effect of payment to sheriff.

22. Subject to the provisions of *The Creditors' Relief Act* the Sheriff shall pay over to the party who sued out the execution the money so paid or recovered, or a sufficient sum to discharge the amount directed to be levied, and if, after satisfaction thereof and of the fees, poundage and expenses of the Sheriff, a surplus remains the same shall be paid to the party against whom the execution issued. 9 Edw. VII. c. 47, s. 20. Payment of proceeds. Rev. Stat. c. 81. Surplus.

23. A Sheriff shall not be bound to sue any person liable upon such cheque, bill of exchange, promissory note, bond, mortgage, specialty or other security unless the party who sued out the execution enters into a bond with two sufficient sureties to indemnify the Sheriff from all costs and expenses to be incurred in the prosecution of the action, or to which he may become liable in consequence thereof; and the expenses of the bond, not exceeding \$5, may be deducted from any money recovered in the action. 9 Edw. VII. c. 47, s. 21; 1 Geo. V. c. 17, s. 34 (4). Indemnity of Sheriff.

24.—(1) A Sheriff shall not, without written instructions and a bond as hereinafter mentioned, be obliged to seize property which is in the possession of a third person claiming the same, and not in the possession of the debtor against whose property the execution was issued. When sheriff obliged to seize goods claimed by third parties.

(2) The instructions shall specify the property in such a way as to enable the Sheriff to identify it. Instructions.

(3) The bond shall be a bond of indemnity to the Sheriff and his assigns, with two sufficient sureties who shall justify in double the value of the property, and the value shall be stated in an affidavit by the creditor or his solicitor or agent attached to the bond. Bond.

(4) The bond shall be assignable to the claimant, and shall be conditioned that the persons executing the same shall be Conditions of bond.

liable for the damages, costs and expenses which the Sheriff or the claimant may be put to by the seizure and subsequent proceedings, including interpleader proceedings, if any, and which he does not recover from other persons who ought to pay the same.

Settlement by
judge.

(5) If the Sheriff is not satisfied with the bond offered the matter in difference shall be determined by a Judge of the County or District Court of the county or district.

Right of
sheriff to
interpleader.

(6) Nothing in this section shall limit the right of the Sheriff to apply for relief by interpleader. 9 Edw. VII. c. 47, s. 22.

Taking money
secured by
mortgage
under execu-
tion.

25.—(1) If a Sheriff is informed on behalf of the execution creditor that the execution debtor is a mortgagee of land and that the mortgage is registered, or that he is entitled to receive a sum of money charged upon land by virtue of a registered instrument, and if the Sheriff is required on behalf of the execution creditor to seize the mortgage or charge, and is furnished in writing with the information necessary to enable him to give the notice hereinafter mentioned, he shall, upon payment of the proper fees, forthwith deliver or transmit to the registrar or master of titles in whose office the mortgage or other instrument is registered, who shall forthwith register the same, a notice in the form or to the effect following:

Form of
sheriff's notice
to registrar.

To the Registrar of (or as the case may be)
By virtue of an execution issued out of the Supreme Court of Ontario (or as the case may be)
whereby I am commanded to levy of the goods and chattels of A. B. \$ for debt, and \$ for costs
lately adjudged to be paid by A.B. to C.D., besides the costs of execution, I have this day seized and taken in execution all the estate, right, title and interest of A.B. in a mortgage made by X.Y to A.B., bearing date the day of , 19 , and registered in
the registry office for the County of (or as the case may be)
on the day of 19 , as number
(or the said mortgage or other instrument may be described in any other manner by reference to dates, parties and the land covered as will enable the notice to be registered against the land therein described) and in the money secured thereby, and this notice is given for the purpose of binding the interest of A.B. under sections 25 to 29 of *The Execution Act*.

Dated this day of , 19 .

(Signed) M. N.,
Sheriff of the County (or District) of

Effect of regis-
tration of
sheriff's notice
to registrar.

(2) Upon registration of the notice the interest of the execution debtor in the mortgage or other instrument, and in the land therein described, and in the money thereby secured and in all covenants and stipulations for securing payment thereof, shall be bound by the execution, and such registration shall be notice of the execution and seizure to all per-

sons who may thereafter in any way acquire any interest in the mortgage, land, money or covenants; and the rights of the Sheriff and of the execution creditor shall have priority over the rights of all such persons subject, as regards the mortgagor or person liable to pay the money secured by the mortgage or charge, to the next following section. 9 Edw. VII. c. 47, s. 23.

26.—(1) A notice similar to that mentioned in the next preceding section shall also be served upon the mortgagor or the person who is liable to pay the money secured by the registered instrument; and after such service the person served shall pay to the Sheriff all money then payable and, as it becomes due, all money which may become payable to the execution debtor so far as may be necessary to satisfy the execution. Notice to mortgagor.

(2) Service of the notice may be made personally, or by leaving it at the dwelling-house of the person to be served with a grown up person residing there, or by registered post to the proper address of the person to be served. Mode of effecting service.

(3) Any payment made after service of the notice or after actual knowledge of the seizure shall be void as against the Sheriff and the execution creditor. 9 Edw. VII. c. 47, s. 24. Payments made after notice.

27. In addition to the remedies herein provided the Sheriff may bring an action on any mortgage or other instrument seized under the provisions of this Act for the sale or foreclosure of the land covered by it, and shall be entitled to a bond of indemnity as in the cases provided for in section 23. 9 Edw. VII. c. 47, s. 25; 1 Geo. V. c. 17, s. 34 (4). Sheriff enforcing mortgage. Indemnity.

28.—(1) Upon an execution, notice whereof is registered under section 25, expiring or being satisfied, set aside or withdrawn, a certificate of such fact shall be given by the Sheriff or by the execution creditor, and the same or the order to set aside, as the case may be, may be registered; and thereupon such seizure shall be vacated and be at an end. When seizure may be vacated.

(2) The order or the certificate of the Sheriff shall not require verification. Verification of order and certificates.

(3) The certificate of the execution creditor shall be verified by the oath of a subscribing witness as in the case of other instruments affecting land. 9 Edw. VII. c. 47, s. 26. Idem.

29. For the registration of a notice under section 25 or of a certificate under section 28 the registrar or master shall be entitled to a fee of 50 cents; and for every notice of seizure under section 25 the Sheriff shall be entitled to a fee of \$1; and for every certificate under section 28 to a fee of 75 cents. 9 Edw. VII. c. 47, s. 27. Fees of registrar and sheriff.

EQUITY OF REDEMPTION IN LAND.

Interpretation. **30.** Where the word "mortgagor" occurs in the next succeeding three sections it shall be read and construed as if the words "his heirs, executors, administrators or assigns, or person having the equity of redemption," were inserted immediately after the word "mortgagor." 9 Edw. VII. c. 47, s. 28.

The interest of a mortgagor. **31.**—(1) The Sheriff to whom an execution against the lands and tenements of a mortgagor is directed may seize, sell and convey all the interest of the mortgagor in any mortgaged lands and tenements.

Equity of redemption. (2) The equity of redemption in freehold land shall be saleable under an execution against the lands and tenements of the owner of the equity of redemption in his lifetime, or in the hands of his executors or administrators after his death, subject to the mortgage, in the same manner as land and tenements may now be sold under an execution. 9 Edw. VII. c. 47, s. 29.

Effect of sale. **32.** The effect of the seizure or taking in execution, sale and conveyance of mortgaged lands and tenements shall be to vest in the purchaser, his heirs and assigns, all the interest of the mortgagor therein at the time the execution was placed in the hands of the Sheriff, as well as at the time of the sale, and to vest in the purchaser, his heirs and assigns, the same rights as the mortgagor would have had if the sale had not taken place; and the purchaser, his heirs or assigns, may pay, remove or satisfy any mortgage, charge or lien which at the time of the sale existed upon the lands or tenements so sold in like manner as the mortgagor might have done; and thereupon the purchaser, his heirs and assigns, shall acquire the same estate, right and title as the mortgagor would have acquired in case the payment, removal or satisfaction had been effected by the mortgagor. 9 Edw. VII. c. 47, s. 30.

Effect of purchase by mortgagee or execution creditor. **33.** A mortgagee of land, or the executors, administrators or assigns of a mortgagee, being or not being the execution creditor, may be the purchaser at the sale, and shall acquire the same estate, interest and rights thereby as any other purchaser, but in that event he or they shall give to the mortgagor a release of the mortgage debt; and if another person becomes the purchaser, and if the mortgagee, his executors, administrators or assigns shall enforce payment of the mortgage debt by the mortgagor the purchaser shall repay the debt and interest to the mortgagor, and in default of payment thereof within one month after demand the mortgagor may recover the debt and interest from the purchaser, and

shall have a charge therefor upon the mortgaged land.
9 Edw. VII. c. 47, s. 31.

CONTINGENT INTERESTS.

34.—(1) Any estate, right, title or interest in land which, under section 10 of *The Conveyancing and Law of Property Act*, may be conveyed or assigned by any person, or over which he has any disposing power which he may, without the assent of any other person, exercise for his own benefit, shall be liable to seizure and sale under execution against such person in like manner and on like conditions as land is by law liable to seizure and sale under execution, and the sheriff selling the same may convey and assign it to the purchaser in the same manner and with the same effect as the person might himself have done.

Liability to execution.
Rev. Stat.
c. 109.

(2) An inchoate right to dower shall not be liable to seizure or sale under execution. 9 Edw. VII. c. 47, s. 32.

Except inchoate right of dower.

(3) Property over which a deceased person had a general power of appointment exercisable for his own benefit without the assent of any other person where the same is appointed by his will may be seized and sold under an execution against the personal representative of such deceased person after the property of the deceased has been exhausted. 1 Geo. V. c. 17, s. 34 (2).

Property subject to power of appointment.

CHURCH PEWS AND SITTINGS.

35.—(1) The interest of any person derived by deed, lease or license in writing from the churchwardens or other authorities of any church in a pew or sitting, if such interest is assignable by the holder thereof, may be sold under execution at the suit of such churchwardens or other authorities for arrears of rent or other charge to which such pew or sitting is subject, or which the holder thereof may have agreed to pay or for which he may be liable, or at the suit of any creditor of such holder, and such churchwardens or other authorities may become purchasers at such sale on behalf of the church, and may relet or sell the right so acquired.

Interest in pew or sitting.

(2) The Sheriff may execute a deed to the purchaser of the interest so sold; and the churchwardens or other authorities shall, on production of such deed, give effect to the same upon payment of any arrears of rent or charge then due.

Deed.

(3) Such sale shall be subject to any continuing rent or charge of such pew or sitting previously stipulated for or imposed, and shall not prejudice the right to impose increased rent or charges on such pew or sitting pursuant to *The Church Temporalities Act*, or any other law or custom. 9 Edw. VII. c. 47, s. 33.

Saving.

3 V. c. 74.

EXECUTIONS AGAINST EXECUTORS.

How execution
enforceable
against
executor, etc.

36. The title and interest of a testator or intestate in land may be seized and sold under an execution upon a judgment recovered by a creditor of the testator or intestate against his executor or administrator in the same manner and under the same process as upon a judgment against the deceased if he were living. 9 Edw. VII. c. 47, s. 34.

EXECUTIONS AGAINST MUNICIPAL CORPORATIONS.

Direction to
levy rate.

37.—(1) An execution against a municipal corporation may be indorsed with a direction to the Sheriff to levy the amount thereof by rate, and the proceedings thereon shall then be the following:—

Statement of
claim to
Treasurer.

(a) The Sheriff shall deliver a copy of the writ and indorsement to the treasurer of the municipal corporation, or leave such copy at the office or dwelling-place of that officer, with a statement in writing of the Sheriff's fees and of the amount required to satisfy the execution, including the interest calculated to some day as near as is convenient to the day of the service;

When sheriff
to strike rate.

(b) If the amount with interest thereon from the day mentioned in the statement is not paid to the Sheriff within one month after the service the Sheriff shall examine the assessment roll of the municipality and shall, in like manner as rates are struck for general municipal purposes, strike a rate sufficient in the dollar to cover the amount due on the execution, with such addition to the same as the Sheriff deems sufficient to cover the interest up to the time when the rate will probably be available, and his own fees and poundage;

Sheriff's pre-
cept to collect-
or, etc., to
levy rate.

(c) The Sheriff shall thereupon issue a precept under his hand and seal of office directed to the collector of the corporation, and shall annex to the precept the roll of such rate; and shall by the precept after reciting the writ and that the corporation has neglected to satisfy the same, and referring to the roll annexed to the precept, command the collector to levy such rate at the time and in the manner by law required in respect to the general annual rates;

Rate rolls.

(d) If, at the time for levying the annual rates next after the receipt of such precept, the collector has a general rate roll delivered to him for the year; he shall add a column thereto, headed "Execution

rate in A.B. vs. The Township" (or as the case may be, adding a similar column for each execution if more than one); and shall insert therein the amount by such precept required to be levied upon each person respectively, and shall levy the amount of such execution rate as aforesaid; and shall, within the time within which he is required to make the return of the general annual rate, return to the Sheriff the precept with the amount levied thereon;

- (e) The Sheriff shall, after satisfying the execution and ^{Surplus.} all the fees and poundage thereon, ~~pay any surplus, within ten days after receiving the same,~~ to the treasurer of the municipal corporation.

(2) The clerk, assessor, and collector of the corporation ^{Functions of clerk, assessors and collectors.} shall, for all purposes connected with carrying into effect, or permitting or assisting the Sheriff to carry into effect, the provisions of this Act with respect to such execution, be deemed to be officers of the Court out of which the writ issued, and as such shall be amenable to the Court and may be proceeded against by attachment, mandamus or otherwise in order to compel them to perform the duties imposed upon them. 9 Edw. VII. c. 47, s. 35.

CHAPTER 81.

An Act to prevent Priority among Execution Creditors.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title. 1. This Act may be cited as *The Creditors Relief Act*.
9 Edw. VII. c. 48, s. 1.
- Interpretation. 2. In this Act,
- “County.” (a) “County” shall include a Provisional Judicial District.
- “County Court.” (b) “County Court” shall include District Court.
- “Execution.” (c) “Execution” shall include a writ of *fiery facias* and every subsequent writ for giving effect thereto.
- “Judge.” (d) “Judge” shall mean a Judge of the County Court of the county the sheriff of which is required to take the proceedings directed by this Act.
- “Sheriff.” (e) “Sheriff” shall include any officer to whom an execution is directed. 9 Edw. VII. c. 48, s. 2.
- Where Judge is disqualified. 3. Where a Judge is disqualified to act in a matter arising under this Act, a Judge of the County Court of an adjoining county shall have jurisdiction to act in his place. 9 Edw. VII. c. 48, s. 3.
- Priority among execution creditors abolished. 4. Subject to the provisions hereinafter contained, there shall be no priority among creditors by execution from the Supreme Court or from a County Court. 9 Edw. VII. c. 48, s. 4.
- Attachment to be for benefit of all creditors. 5.—(1) A creditor who attaches a debt shall be deemed to do so for the benefit of all creditors of his debtor as well as for himself.
- To whom to be paid. (2) Payment of such debt shall be made to the sheriff of the county in which the garnishee resides or, if there are more garnishees than one in respect of the same debt, then to the sheriff of the county in which any one of them resides.
- Attachments in Division Courts. (3) This section shall not apply to debts attached by proceedings in a division court unless before the amount

recovered by the garnishee proceedings is actually received by the creditor an execution against the property of the debtor is placed in the hands of the sheriff of such county.

(4) Where money is paid to a sheriff in whose hands there is no execution against the property of the debtor, and there is in the hands of the sheriff of another county an execution against the property of the debtor, the Court or a Judge on the application of such last mentioned sheriff or of a creditor or of the debtor may direct, on such terms as to costs and otherwise as may seem just, that such money be paid over to such last mentioned sheriff to be distributed by him as if such money had then been paid to him by the garnishee; and the Court or Judge shall fix the compensation to be paid to the sheriff by whom the money was received from the garnishee for his services.

(5) Where money which a sheriff is entitled to receive under the provisions of this section is paid into a division court the sheriff shall be entitled to demand and receive the same from the clerk of such court for the purpose of distributing it under the provisions of this Act.

(6) An attaching creditor shall be entitled to share in respect of his claim against the debtor in any distribution made under the provisions of this Act, but his share shall not exceed the amount recovered by his garnishee proceedings unless he has in due time placed an execution or a certificate given under this Act in the sheriff's hands.

(7) The sheriff shall be entitled to poundage upon money received and distributed by him under the provisions of this section at the rate of one and a quarter per cent. and no more.

(8) If an attached debt which the sheriff is entitled to receive, or any part of it, is received by the attaching creditor the sheriff may recover the same from him; but a clerk of a division court shall not be liable for making payment to the creditor unless at the time of payment he has notice that there is an execution against the property of the debtor in the sheriff's hands. 9 Edw. VII. c. 48, s. 5.

6.—(1) Where a sheriff levies money under an execution against the property of a debtor, or receives money in respect of a debt which has been attached or sold under the provisions of section 16 of *The Absconding Debtors' Act*, he shall forthwith make an entry, Form 1, in a book to be kept in his office open to public inspection without charge.

(2) The money shall thereafter be distributed rateably among all execution creditors and other creditors whose executions or certificates given under this Act were in the sheriff's hands at the time of the levy or receipt of the money, or who deliver their executions or certificates to the sheriff

within one month from the entry, subject to the provisions hereinafter contained as to the retention of dividends in the case of contested claims, and to the payment of the costs of the creditor under whose execution the amount was made; and subject also to the provisions of subsection 3 of the next preceding section, and, as respects money recovered by garnishee proceedings, subject to the payment thereof to the creditor who obtained the attaching order of his costs of such proceedings.

Money realized on sale under interpleader order.

(3) Subsection 2 shall not apply to money received by a sheriff as the proceeds of a sale of property by him under an interpleader order; but upon the determination of the interpleader proceeding in favour of the creditors the money, whether in the sheriff's hands or in court pending such determination, shall, subject to the provisions of subsection 4, be distributed by the sheriff among the creditors contesting the adverse claim.

Rights of creditors in case of interpleader proceedings.

(4) Where proceedings are taken by a sheriff for relief under any provisions relating to interpleader those creditors only who are parties thereto and who agree to contribute *pro rata* in proportion to the amount of their executions or certificates to the expense of contesting any adverse claim shall be entitled to share in any benefit which may be derived from the contestation of such claim so far as may be necessary to satisfy their executions or certificates.

Order as to carrying on proceedings.

(5) The Judge making the interpleader order may direct that one creditor shall have the carriage of the interpleader proceedings on behalf of all creditors interested, and the costs thereof, as between solicitor and client, shall be a first charge upon the money or goods which may be found by the proceedings to be applicable upon the executions or certificates.

Time allowed in interpleader.

(6) Upon any interpleader application the Judge may allow to other creditors who desire to take part in the contest a reasonable time in which to place their executions or certificates in the sheriff's hands upon such terms as to costs and otherwise as may be deemed just.

Application of subsequent levy.

(7) Where the sheriff, subsequently to the entry, but within the month, levies a further amount from the property of a debtor or receives money in respect of a debt which has been attached or sold the same shall be dealt with as if such amount had been levied or received prior to the entry.

Notice and distribution on further levy.

(8) If, after the month, a further amount is so levied or received a new notice shall be entered and the distribution to be made of the amount so levied or received and of any further amount levied or received within a month of the entry of the last mentioned entry shall be governed by the entry thereof in accordance with the foregoing provisions of this section, and so from time to time as further amounts are so levied or received.

(9) Where a creditor has shared in a previous distribution he shall be entitled to share in a subsequent one only in respect of the amount remaining due to him after crediting what he has received in any previous distribution. Share in subsequent distribution.

(10) In distributing money under this section creditors who have executions against goods or lands only or against goods and lands shall be entitled to share rateably with all others any money realized under execution against either goods or lands or against both, or under an attaching order. Equality of all executions.

(11) Subject to the provisions of subsection 6 of section 5 a creditor shall not be entitled to share in the distribution unless by the delivery of an execution, or otherwise under this Act, he has established a claim against the debtor either alone or jointly with some other person. What creditors may share.

(12) Where money in the hands of the sheriff for distribution is the proceeds of the property of an absconding debtor against whom an order of attachment has been issued under *The Absconding Debtors Act*, the period mentioned in subsection 2 shall be two months, and subsection 8 shall be read as if the words "the month" in the first line were "the two months." 9 Edw. VII. c. 48, s. 6. Money realized under Absconding Debtors Act. Rev. Stat. c. 82.

(As to right of employees of debtors for wages, see The Wages Act, Rev. Stat. c. 143.)

7. If a debtor permits an execution issued against him under which any of his goods or chattels are seized by a sheriff to remain unsatisfied in the sheriff's hands until within two days of the time fixed by the sheriff for the sale thereof, or for twenty days after the seizure, or allows an execution against his lands to remain unsatisfied for nine months after it has been placed in the sheriff's hands, the proceedings hereinafter authorized may be taken by other creditors or claimants in respect of debts which are overdue. 9 Edw. VII. c. 48, s. 7. Proceedings where debtor allows execution to remain unsatisfied.

8.—(1) An affidavit, Form 2, of the debt and the particulars thereof may be made in duplicate by the creditor, or by one of the creditors in case of a joint debt, or by a person cognizant of the facts. Affidavit of creditor.

(2) Prior to or simultaneously with the filing with the Clerk of the County Court of the affidavit there shall be filed with him a certificate of the sheriff, or an affidavit, showing that such proceedings have been had against the debtor as entitle the creditor to proceed under this Act. Filing affidavit or certificate.

(3) The claimant shall serve on the debtor one of the duplicates and a notice, Form 3. Service on debtor.

(4) Where the affidavit and notice are to be served out of Ontario the Judge shall by order fix the time after which the Service out of Ontario.

next step may be taken by the claimant as hereinafter provided. 9 Edw. VII. c. 48, s. 8.

Notice by
debtor of
address for
service.

9.—(1) An execution debtor may give notice in writing to the sheriff that any claims to be served upon him may be served upon a solicitor in Ontario, whose name and address shall be given, or by mailing the same to an address stated in the notice.

Entry of
notice.

(2) The sheriff shall thereupon enter the notice in the book mentioned in subsection 1 of section 6, and so long as any execution which was in the sheriff's hands at the time the notice was given shall remain in his hands shall repeat such entry immediately below any entry, Form 1, made in respect of the execution, unless the notice is revoked in writing, in which case the entry thereof shall be marked "revoked."

Service at
address.

(3) So long as the notice is not revoked the affidavit of claim and notice, Form 3, may, where a solicitor is named, be served upon an execution debtor by serving the same upon the solicitor, or, if mailing is required, then by mailing the same by registered post to the address in the notice given by the execution debtor.

Service by
mail.

(4) Where the notice, Form 3, served on a debtor does not state some place in or within three miles of the county town of the county in which the proceedings are being taken, at which service may be made upon the claimant, or does not give the name and address of some solicitor in Ontario who may be served on the claimant's behalf, service of any notice, paper or document may be made upon the claimant by mailing the same, by registered post, addressed to the claimant at the county town.

Filing
affidavit.

(5) The claimant shall file with the Clerk of the County Court of the county, the sheriff of which has the execution, one of the duplicate affidavits of claim, and a copy of the notice with an affidavit of service thereof, Form 4.

Service
generally.

(6) The affidavit and the notice shall, where practicable, be personally served upon the debtor; but if it is made to appear to the Judge that the claimant is unable to effect prompt personal service, the Judge may order substitutional or other service, or may direct some act to be done which shall be deemed sufficient service. 9 Edw. VII. c. 48, s. 9.

Certificate
where claim
not disputed.

10.—(1) Where the claim is not contested in manner hereinafter mentioned, after ten days from the day of service, or after the time mentioned in the order provided for by subsection 4 of section 8, as the case may be, on the application of the claimant and his filing proof of due service of the affidavit and notice, or where the claim is contested, upon the determination of the dispute in favour of the claimant, either in whole or in part, the Clerk of the

County Court shall deliver to the creditor a certificate, Form 5; and where the claim is disputed as to a part only, the claimant may elect, by a writing filed with the clerk, to abandon such part and shall be entitled to a certificate as to the residue.

(2) Upon delivery of the certificate to the sheriff the claimant shall be deemed to be an execution creditor within the meaning of this Act, and shall be entitled to share in any distribution as if he had delivered an execution to the sheriff, and the certificate shall bind the lands and goods of the debtor in the same manner as an execution; subject, however, to the debt being afterwards disputed by a creditor as hereinafter provided.

(3) For the purpose of interpleader proceedings the certificate shall be deemed to be an execution.

(4) If the certificate is obtained by a solicitor his name and address shall be endorsed thereon; and if obtained by the claimant in person there shall be endorsed thereon a statement of some place in, or within three miles of the county town of the county in which the proceedings are being taken, at which service may be made upon him; and, in default thereof, service of any notice, paper or document may be made upon the claimant by mailing the same by registered post addressed to him at the county town.

(5) On receiving the certificate the sheriff shall make a further seizure of the property of the debtor to the amount of the debt so claimed, and the sheriff's fees; and so from time to time in case further certificates are received.

(6) A certificate shall remain in force for three years from the date thereof but may from time to time be renewed in the same manner as an execution.

(7) Notwithstanding the expiry of an execution or certificate before the termination of the month during which a notice of money having been levied or received is required to be entered, the execution or certificate, as to any money levied or received during such month, shall be deemed to be in full force and effect. 9 Edw. VII. c. 48, s. 10.

11.—(1) The claim may be contested by the debtor or by a creditor of the debtor.

(2) Where the debtor contests the claim, he shall file with the clerk an affidavit stating that he has a good defence to the claim, or to a specified part of it on the merits, but the Judge may dispense with the affidavit on terms or otherwise.

(3) The debtor shall file the affidavit and serve upon the claimant a copy thereof within ten days after service upon him of the affidavit of claim and the notice, or within the time mentioned in the order provided for by subsection 4 of

section 8 as the case may be, or within such further time as the Judge may allow.

Contestation
by creditor.

(4) Where the contestation is by a creditor he shall file with the Clerk an affidavit to the effect that he has reason to believe that the debt claimed is not really and in good faith due from the debtor to the claimant; but the Judge may dispense with the affidavit on terms or otherwise.

Notice of
contestation.

(5) Notice of contestation, whether by the debtor or by a creditor, together with a copy of the affidavit, if any, shall be served upon the claimant within five days after filing the affidavit, or after the order of the Judge if the affidavit is dispensed with.

Certificate of
contestation.

(6) The affidavit by a creditor may be filed, and a certificate thereof delivered to the sheriff, at any time before distribution is made, and the sheriff shall forthwith give notice of the receipt of such certificate to the claimant.

Address for
service.

(7) The affidavit of the debtor or other contestant shall have endorsed thereon a statement of some place, in or within three miles of the county town of the county in which the proceedings are being taken, at which service may be made upon him, or the address of a solicitor in Ontario who may be served on his behalf, and in default thereof, service of any notice, paper, or document may be made upon the debtor or contestant by mailing the same by registered post addressed to him at such county town. 9 Edw. VII. c. 48, s. 11.

Service on
solicitor.

12. Where the address of a solicitor is given for service which is not within three miles of the county town where the proceedings are carried on service may be made upon him by serving his agent in Toronto. 9 Edw. VII. c. 48, s. 12.

Distribution
in case of
contestation.

13.—(1) Where a claim is contested by a creditor after a certificate has been placed in the sheriff's hands, the sheriff, unless the Judge otherwise orders, shall levy as if such contestation had not been made, and shall, until the determination of the contestation, retain in the bank the amount which would be apportionable to the claim if valid, and shall, as soon after the expiry of the month as is practicable, distribute the residue of the money made amongst those entitled.

Application for
allowance of
claim.

(2) The claimant whose claim is contested may apply to the Judge for an order allowing his claim and determining the amount; and if he does not make such application within eight days after receiving notice of the contestation or within such further time, if any, as the Judge may allow, he shall be taken to have abandoned his claim.

When contest
is not in good
faith.

(3) Where the contestant is a creditor and there is reason to believe that the contestation is not being carried on in good faith, any other creditor may apply for an order per-

mitting him to intervene in the contestation. 9 Edw. VII. c. 48, s. 13.

14.—(1) The Judge may determine any question in dispute in a summary manner, or may direct an action to be brought or an issue to be tried with or without a jury in any Court and in any county for the determination thereof, and make such order as to the costs of the proceedings as he may deem just. Trial of contestation.

(2) Where the sum in controversy appears to be over \$400 exclusive of costs the Judge shall direct that the action be brought or the issue tried in the Supreme Court, and subject to any order which that Court or a Judge thereof may make in that behalf, shall name the county in which the trial is to take place. Where amount in controversy exceeds \$400.

(3) Where an issue is directed the trial shall take place and all proceedings subsequent thereto shall be the same as if it had been an action in the Court in which it is ordered to be tried. 9 Edw. VII. c. 48, s. 14. Proceedings where issue tried.

15. The same proceedings may be had for the production of documents and for the examination of parties or others, either before or at the trial, as may be taken in an ordinary action, and such proceedings may also be taken before the application to the Judge, and as a foundation therefor. 9 Edw. VII. c. 48, s. 15. Production, examination, etc.

16.—(1) The Clerk of the County Court shall keep a book in which, before giving a certificate or issuing an execution for a claim, he shall enter the following particulars with reference to every claim in respect of which he gives a certificate or issues an execution; Clerk to keep book of record.

(a) The name of the claimant, and of the debtor;

(b) The date of the entry;

(c) The amount of the debt, exclusive of costs;

(d) The amount of costs;

(e) If the proceedings have been set aside, that fact, and shortly the reason therefor.

(2) The entry shall, subject to the provisions of this Act, have the effect of and be a final judgment of the Court for the debt and costs. Effect of entry.

(3) The Clerk shall index the entries in a book alphabetically under the names of the debtors. Index.

(4) Where the original papers are lost or destroyed a copy of the entry shall be evidence of the matters therein set forth. Copy of entry evidence. 9 Edw. VII. c. 48, s. 16.

Division Court
judgment
creditors.

17. A creditor who has recovered a judgment in a division court against the debtor may deliver to the sheriff a certificate, under the hand of the clerk and the seal of the division court, of the amount of his judgment and of the costs to which he is entitled; and the certificate so delivered shall have the same effect, for the purposes of this Act, as if the creditor had delivered to the sheriff an execution from a county court. 9 Edw. VII. c. 48, s. 17.

Establishing
claim in an-
other county.

18. Where a creditor has taken in one county the prescribed proceedings in respect of his claim and desires to establish his claim, for the purposes of this Act in another county he may do so by obtaining from the Clerk of the County Court of the county first mentioned another certificate, Form 5, and delivering the same to the sheriff of such other county, and the delivery of the certificate to the sheriff shall have the same effect in such other county from the time of the delivery thereof as if the certificate had been issued by the Clerk of the County Court of such other county upon proceedings therein. 9 Edw. VII. c. 48, s. 18.

Executions
may issue to
any county.

19. A creditor, entitled to obtain a certificate from the Clerk of a County Court, may also sue out an execution into any county in the same manner as on an ordinary judgment; but this shall not prejudice the right of any other creditor to contest the claim of such first mentioned creditor under the provisions of this Act. 9 Edw. VII. c. 48, s. 19.

Effect of
decision after
contestation.

20.—(1) Where a claim is contested in one county, the decision thereon shall, as between the parties to the contestation, determine the amount of the claim, for the purposes of this Act, in all other counties in which the claim is filed, and the certificate of the Clerk of the County Court of the county in which the contestation has taken place of the result thereof shall be sufficient evidence of the decision.

Fee for
certificate
of result.

(2) Upon payment of a fee of fifty cents the certificate shall be granted to any party to the proceedings who applies therefor. 9 Edw. VII. c. 48, s. 20.

Effect of
payment or
withdrawal of
all executions
and certifi-
cates.

21.—(1) Where the debtor, without a sale by the sheriff, pays the full amount owing in respect of the executions and claims in the sheriff's hands at the time of such payment, and no other claim has been filed, or where all executions and certificates in the sheriff's hands are withdrawn and any claims filed are paid or withdrawn, notice shall not be entered under the provisions of section 6 and no further proceedings shall be taken under section 7.

Where not all
satisfied.

(2) Save as aforesaid after a certificate has been delivered to the sheriff, the withdrawal or expiry of the execution upon which the proceedings are founded, or any stay of the same, or the satisfaction of the plaintiff's claim thereon, or the set-

ting aside or return of the execution, shall not affect the proceedings which may be taken under this Act, and except so far as the action taken with respect to the execution may affect the amount to be levied, the sheriff shall levy upon the property of the debtor, as he would have done had the execution remained in his hands in full force for execution, and he may also take the like proceedings as he would have been entitled to take had the execution been a writ of *venditioni exponas*.

(3) Where a debtor, without a sale by the sheriff, pays to him part of the amount owing in respect of an execution or certificate in his hands, and there is at the time no other execution or certificate in his hands, he shall apply the same on the execution or certificate, and section 6 shall not apply to the money so paid. 9 Edw. VII. c. 48, s. 21.

22.—(1) Where proceedings have been taken against a debtor under *The Absconding Debtors Act*, and his property has been attached under an order of attachment before an execution has been placed in the hands of the sheriff, and the money levied is the proceeds of such property or a part thereof, the cost of the order of attachment, or, if there are more than one, the one first placed in the sheriff's hands and the proceedings thereon shall have priority over the claim of all other creditors.

(2) Where an attaching creditor is entitled to priority under subsection 1 the priority provided for by subsection 2 of section 6 shall not be given to the execution creditor.

23.—(1) The Clerk of the County Court shall ascertain and state in his certificate the amount of the costs to which the claimant is entitled as against the debtor.

(2) Such costs shall be the following:

(a) For serving the affidavit of claim and notice, in the case of claims over \$400, on the scale of the Supreme Court, and in the case of claims exceeding \$200 and not exceeding \$400, on the County Court scale, and in the case of claims of \$200 and under, on the division court scale; but if the claim does not exceed \$200 no greater fees are to be allowed than would be allowed to a division court bailiff for the service of a division court summons and mileage if the claim had been sued in the proper division court;

(b) The fees paid to the Clerk of the County Court, on the scale for like proceedings in the County Court, unless the claim does not exceed \$200, in which

case his fees shall be those allowable for like proceedings in the division court;

(c) Where there is no contest, \$5 for fees of a solicitor, if one is employed, unless the amount of the claim does not exceed \$200, in which case the sum of \$2 shall be allowed;

(d) Where there is a contest, such additional costs as the judge may allow, to be taxed on the scale of the Supreme Court, County Court, or division court, according as the amount in dispute is within the jurisdiction of one or other of such courts;

(e) The costs of obtaining an order for substitutional service or other similar order and of such service, and of or incidental to service out of Ontario, if the claim is within the jurisdiction of the division court, only such costs as would have been allowed in the division court. 9 Edw. VII. c. 48, s. 23.

Payment to
sheriff of fund
in Court.

24. Where there is in any Court a fund belonging to an execution debtor, or to which he is entitled, the same or a sufficient part thereof to meet the executions and certificates in the sheriff's hands, may, on the application of the sheriff or any person interested, be paid over to the sheriff, and the same shall be deemed to be money levied under execution within the meaning of this Act. 9 Edw. VII. c. 48, s. 24.

Money made
by receiver.

25. Where a judgment creditor obtains the appointment of a receiver by way of equitable execution of property of his debtor, the receiver shall pay into Court the money received by him by virtue of his receivership, and the same shall be subject to the provisions of the next preceding section, but the creditor shall be entitled to be paid thereout the costs of and incidental to the receivership order and the proceedings thereon in priority to the claims of all other creditors. 9 Edw. VII. c. 48, s. 25.

Goods in
hands of
Division Court
bailiff.

26.—(1) If the sheriff does not find property of a debtor leviable under the executions and certificates in his hands sufficient to pay the same in full, but finds property or the proceeds thereof in the hands of the bailiff of a division court under an execution or attachment against the debtor, the sheriff shall demand and obtain them from the bailiff, who shall forthwith deliver the same to the sheriff, with a copy of every execution and attachment in his hands against the debtor, and a memorandum showing the amount to be levied under the execution, including the bailiff's fees, and the date upon which each execution or attachment was received by him.

Duty of
bailiff.

(2) If a bailiff fails to deliver any of such property or the proceeds thereof he shall pay double the value of that which is retained, which may be recovered by the sheriff from him with costs of suit, and shall be accounted for by the sheriff as part of the estate of the debtor. Penalty for default.

(3) The costs and disbursements of the bailiff shall be a first charge upon such property or the proceeds thereof and shall be paid by the sheriff to the bailiff upon demand, after being taxed by the division court clerk. Costs.

(4) The sheriff shall distribute the proceeds among the creditors entitled to share in the distribution and the division court execution creditors shall be entitled without further proof to stand in the same position as creditors whose executions are in the sheriff's hands. 9 Edw. VII. c. 48, s. 26. Distribution of proceeds.

27. Where the amount levied by the sheriff is not sufficient to pay the executions and certificates with costs in full the money shall be applied to the payment rateably of such debts and costs of the creditors, after retaining the sheriff's fees, including poundage, and after payment in full of the taxed costs and the costs of the execution to the creditor at whose instance and under whose execution the seizure and levy were made where he is entitled to priority therefor under the provisions of this Act. 9 Edw. VII. c. 48, s. 27. Apportionment of money when amount insufficient to pay claim in full.

28. The sheriff, if directed by an endorsement upon a certificate, shall, in addition to the amounts named therein, levy interest on such amounts from the date of the certificate, or from the date named in that behalf in the certificate, and also \$1.35 for the disbursements on every renewal of the certificate; and where such renewal is made upon the application of a solicitor he shall also levy \$1.25 for the solicitor's costs on the renewal. 9 Edw. VII. c. 48, s. 28. Levy of interest and costs of renewals.

29. Where money is to be distributed by the sheriff under this Act he shall not be entitled to poundage as upon separate executions or certificates, but only upon the net proceeds distributable by him at the same rate as if the whole amount had been payable upon one execution. 9 Edw. VII. c. 48, s. 29. Sheriff's poundage.

30.—(1) Where money is made under an execution it shall be taken to have been made under all the executions and certificates entitled to the benefit thereof, and, upon payment being made to the person entitled under any such execution or certificate, the sheriff shall endorse thereon a memorandum of the amount so paid, but he shall not, except on the request of the party who issued the execution, or by direction of the Court out of which the same issued, or of a Judge thereof, return the execution until the same has been fully Application of money made under execution. Return.

satisfied or has expired, in which latter case the sheriff shall make a formal return of the amount made thereunder.

Compelling
payment by
sheriff.

(2) The like proceedings may be taken to compel payment by the sheriff of money payable in respect to a certificate as can now be had to compel the return by the sheriff of an execution. 9 Edw. VII. c. 48, s. 30.

Statement to
be kept in
sheriff's office,
pending dis-
tribution.

31. Pending the distribution the sheriff shall keep, in the book mentioned in section 6, a statement, Form 6, showing the following particulars:—

(a) The amounts levied or received and the dates of levy or receipt;

(b) Each execution, certificate or order in his hands at the time of making the entry, Form 1, or subsequently received during the month, the amount thereof, for debt and costs, and the date of receipt, and such statement shall be amended from time to time as additional amounts are levied or received or further executions, certificates or orders are received. 9 Edw. VII. c. 48, s. 31.

Sheriff to give
information
as to estate of
debtor.

32. The sheriff shall at all times without fee answer any reasonable question which he may be asked orally in respect to the property of the debtor by a creditor or any one acting upon his behalf, and shall facilitate the obtaining by him of full information respecting the same and the probable dividend to be realized therefrom in his county, or any other information in connection with the property which the creditor may reasonably desire to obtain. 9 Edw. VII. c. 48, s. 32.

Distribution
by sheriff
where amount
levied insuffi-
cient to meet
all claims.

33.—(1) Where at the time for distribution the money is insufficient to pay all claims in full the sheriff shall first prepare for examination by the debtor and his creditors a list of the creditors entitled to share in the distribution, with the amount due to each for principal, interest and costs.

Contents
of list.

(2) The list shall be so arranged as to show the amount payable to each creditor, and the total amount to be distributed; and the sheriff shall deliver, or send by registered post to each creditor or his solicitor, a copy of the list.

Time for
distribution.

(3) If within eight days after all the copies have been delivered or posted, or within such further time as the Judge may allow, no objection is made as provided by this Act the sheriff shall make distribution forthwith pursuant to such list.

Where objec-
tion made.

(4) If objection is made the sheriff shall forthwith distribute rateably so much of the money made, and among such persons, as will not interfere with the effect of the objection in case the same should be allowed.

(5) Any person affected by the proposed scheme of distribution may contest the same by giving, within the time mentioned in subsection 3, a notice in writing to the sheriff stating his objection to the scheme and the grounds thereof. Right of contestation.

(6) The contestant shall within eight days thereafter apply to the Judge for an order adjudicating upon the matter in dispute, otherwise the contestation shall be taken to be abandoned. Order.

(7) The contestant shall, within the time mentioned in the next preceding subsection, obtain from the Judge an appointment for hearing and determining the matter in dispute. Appointment.

(8) A copy of the appointment and a notice in writing, Form 7, of the objections stating the grounds thereof shall be served by the contestant upon the debtor, unless he is the contestant, and upon the creditors or such of them as the Judge may direct. Service.

(9) The Judge may determine any question in dispute in a summary manner, or may direct an action to be brought or an issue to be tried with or without a jury in any Court and in any county for the determination thereof, and may make such order as to the costs of the proceedings as he may deem just, and the provisions of subsections 2 and 3 of section 14 shall apply. Determination of dispute.

(10) Where a claimant is held to be not entitled, or to be entitled to part only of his claim, the money retained pending the contestation, or the portion as to which the claimant shall have failed, shall be distributed among the creditors who would have been entitled thereto as the same would have been distributed had the claim in respect thereof not been made. Distribution of money retained.

(11) Where a debtor has executed a mortgage or other charge, otherwise valid, upon his property or any part thereof after the receipt of an execution by the sheriff and before distribution, such mortgage or charge shall not prevent the sheriff from selling the property under any execution or certificate placed in his hands before distribution as if such mortgage or charge had not been given, nor prevent creditors whose executions or certificates are subsequent thereto from sharing in the distribution; but in distributing the money realized from the sale of such property the sheriff shall deduct and pay to the person entitled thereto the amount of such mortgage or charge from the amount which would otherwise be payable out of the proceeds of such property to such subsequent creditors. Rights of subsequent execution creditors where first execution followed by a mortgage.

(12) In the case provided for in the next preceding subsection the sheriff shall prepare a separate scheme of distribution of the proceeds of the encumbered property without reference to the mortgage or charge, and, from the dividends Scheme of distribution in above case.

payable according to such scheme to subsequent creditors, there shall be deducted the amount of the mortgage or charge and the amount so deducted shall be paid to the encumbrancer. 9 Edw. VII. c. 48, s. 33.

Directions by Judge to avoid unnecessary parties and trials.

34. Where several creditors are interested in a contestation, either for or against the same, the Judge shall give such directions for saving the expense of an unnecessary number of parties and trials, and of unnecessary proceedings, as he may deem just, and shall direct by whom and in what proportions any costs incurred in the contestation, or in any proceedings thereunder, shall be paid, and whether any and what costs shall be paid out of the money levied. 9 Edw. VII. c. 48, s. 34.

Direction by Judge to sheriff where claim is disputed.

35.—(1) The Judge may direct the sheriff to levy for an amount sufficient to cover a claim which is in dispute, or part thereof, or if it appears to the Judge that it is improbable that the debtor has other sufficient property he may direct the sheriff to retain in his hands during the contestation the share which, if the claim is sustained, will be apportionable to it, or a part thereof.

Authority of sheriff under order.

(2) An order to levy under this section shall confer on the sheriff the same authority as he would have under an execution. 9 Edw. VII. c. 48, s. 35.

Effect of decisions.

36. The decision of a Judge of the County Court or of a Divisional Court on an appeal shall bind the debtor and all his creditors, unless it appears that the decision was obtained by fraud or collusion. 9 Edw. VII. c. 48, s. 36.

Deposit of money in bank.

37.—(1) Where money comes into the hands of a sheriff he shall, whenever the same amounts to \$100, deposit it in some incorporated bank designated for that purpose by order of the Lieutenant-Governor in Council, or, where there is no such bank, in some incorporated bank in which public money of Ontario is then being deposited.

Special account.

(2) The deposit shall be made in a special account in the name of the sheriff as "Trustee for the creditors of (the debtor)". 9 Edw. VII. c. 48, s. 37.

Attaching orders by sheriff or creditors.

38. Where there are in the sheriff's hands several executions and certificates, and there does not appear to be sufficient property to pay all and his own fees, he may apply for an order attaching any debt owing to the execution debtor by any person resident in the county of such sheriff, whether the debt is owing by such person alone or jointly with another person resident or not resident in such county, and to procure the order and to obtain and enforce payment of the debt, the sheriff may take the same proceedings as a creditor; and in such case an execution may be directed to him in the

same manner as if the attachment were by a creditor; and the proceeds of the debt attached shall be dealt with and distributed in the same manner as if he had realized the same under execution. 9 Edw. VII. c. 48, s. 38.

39. If any party to a contestation or matter upon which a Judge has rendered or made a final judgment or order is dissatisfied with such judgment or order, and the same is in respect to a question involving a sum greater than \$100, he may appeal therefrom to a Divisional Court as nearly as may be according to the practice in force in respect of appeals from a County Court or a Judge thereof. 9 Edw. VII. c. 48, s. 39.

40. For the purpose of giving effect to this Act and carrying out its provisions a Judge shall have all the powers which a County Court or a Judge thereof has by law for other purposes; and any proceedings erroneously taken under this Act may be set aside by the Judge, with or without costs as he thinks fit. 9 Edw. VII. c. 48, s. 40.

41. Upon any proceeding before the Judge the evidence may be taken orally or by affidavit as the Judge may direct. 9 Edw. VII. c. 48, s. 41.

42. Besides the fees authorized to be paid to the Clerk of the County Court for his own use, the following fees shall be payable to the Crown in law stamps upon all claims filed, where the amount of the claim exceeds \$200:—

	\$	cts.
On an affidavit of claim where the amount claimed does not exceed \$400	0	80
On every such affidavit where the claim exceeds \$400.	1	50
On every certificate of the Clerk given under section 10, where the claim does not exceed \$400.	0	80
On every such certificate where the claim exceeds \$400.	1	50
On every order made by the Judge allowing or disallowing a claim, where the claim does not exceed \$400	0	50
On every such order where the claim exceeds \$400...	1	00

9 Edw. VII. c. 48, s. 42.

43. Except where inconsistent with this Act, the provisions of *The Judicature Act* and Rules of Court as to practice and procedure shall apply to proceedings under this Act. 9 Edw. VII. c. 48, s. 43.

SCHEDULE.

FORM 1.

(Section 6, Subsection 1.)

SHERIFF'S ENTRY.

I have on this day in my hands for distribution under *The Creditors Relief Act* among the creditors of *C.D.*, the sum of \$
and the distribution will be made among the creditors of the said *C. D.* entitled to share therein, at the expiration of one month from this day.

Dated , 19 .

F. G.,
Sheriff.

9 Edw. VII. c. 48, Form 1.

FORM 2.

(Section 8, Subsection 1.)

AFFIDAVIT OF CLAIM.

THE CREDITORS RELIEF ACT.

In the County Court of the County of

A. B.....Claimant.

and

C. D.....Debtor.

I, A. B., of , in the County of ,
Merchant (or as the case may be), make oath and say:—

1. I am the above named claimant (or the duly authorized agent of the claimant in this behalf, and have a personal knowledge of the matter hereinafter deposed to).

2. The above named debtor is justly and truly indebted to me (or to the above named claimant) in the sum of \$, for [here state shortly the nature and particulars of the claim .

Sworn before me at
this day of } A. B.
19 .

A Commissioner, etc., (or as the case may be).

9 Edw. VII. c. 48. Form 2.

FORM 4.

(Section 9, Subsection 5.)

AFFIDAVIT OF SERVICE OF CLAIM.

THE CREDITORS RELIEF ACT.

In the County Court of the County of

A. B.....Claimant.

and

C. D.....Debtor.

I, G. H., of , in the County of , make oath and say:—

1. That I did, on the day of , 19 , personally serve C. D., the above named debtor (or as the case may be) with an original affidavit, identical with the annexed affidavit, and that there was at the time of such service, attached to (or endorsed upon) the said affidavit so served a true copy of the notice addressed to the debtor, now attached to (or endorsed upon) the said annexed affidavit.

Sworn before me at

this

19

day of } G. H.

A Commissioner, etc. (or as the case may be).

9 Edw. VII. c. 48, Form 4.

FORM 5.

(Section 10, Subsection 1, and Section 18.)

CERTIFICATE OF PROOF OF CLAIM.

THE CREDITORS RELIEF ACT.

In the County Court of the County of

A. B.....Claimant.

and

C. D.....Debtor.

I, Clerk of the County Court of the County of , do hereby certify

(1) That the above named claimant did on the day of , 19 , file with me a claim against the above named debtor, for the sum of , together with an affidavit of personal service thereof (or as the case may require) and of the notice required by *The Creditors Relief Act*, upon the said debtor, and that it thereby appears that such service was made on the day of , 19 .

(2) And I further certify that the debtor has not contested the said claim (or, has only contested the sum of part of the said claim (as the case may be), and that the claimant having abandoned such part is entitled to the residue of his claim, being the sum of and the further sum of (for costs). (Or when the claim is contested in whole or in part), (2) That the claim has been allowed by the Judge at the sum of \$, with \$ for costs.

G. H.,

Clerk.

9 Edw. VII. c. 48, Form 5.

FORM 6.

(Section 31.)

SHERIFF'S STATEMENT OF EXECUTIONS, ETC., IN HIS HANDS AGAINST
C. D.

CAUSE.	Proceedings.	Claim without Costs.	Costs.	Date of receipt by Sheriff.	Amount Levied or received.	Date of Levy or receipt.
		\$	\$		\$	
A. B. v. C. D....	<i>Fi. fa.</i> goods and lands.	504	30	18th Feb., 19 ..	500	1st May, 19 ..
F. G. v. C. D. & } E. G.	<i>Fi. fa.</i> goods and lands.	400	20	1st March, 19 ..	300	3rd May, 19 .. Nothing made against E. G.
K. L. v. C. D....	Garnishee order.....	500	30	.....	300	10th May, 19 ..
M. N. v. C. D....	Creditor's Certificate	400	5	15th May, 19 ..		

9 Edw. VII. c. 48, Form 6.

FORM 7.

(Section 33, Subsection 8.)

NOTICE OF CONTESTATION OF SCHEME OF DISTRIBUTION.

THE CREDITORS RELIEF ACT.

In the County Court of the County of

A. B.....Claimant.

and

C. D.....Debtor.

To C. D., debtor, and F. G. and M. N., claimants.

Take notice that I contest the scheme of distribution prepared by the Sheriff of the County of _____ in respect of the claims of you, the said F. G. and M. N., on the following ground (*state distinctly the ground*), and a copy of the Judge's appointment to adjudicate upon the matter is served herewith.

Dated, etc.

X. Y.,

Contestant.

9 Edw. VII. c. 48, Form 7.

CHAPTER 82.

An Act respecting Absconding Debtors.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Absconding Debtors Act*.
9 Edw. VII. c. 49, s. 1.

Interpretation.
"Property." **2.** In this Act, "property" shall include credits and effects. 9 Edw. VII. c. 49, s. 2.

Who to be
regarded as an
absconding
debtor. **3.**—(1) If a person resident in Ontario departs therefrom with intent to defraud his creditors or any of them, or to avoid being arrested or served with process, being then possessed of any real or personal property therein not exempt by law from seizure under execution, he shall be deemed an absconding debtor, and such property may be seized and taken by an order of attachment for the satisfying of his debts.

Order. **2.** The order shall not be made except in a pending action. 9 Edw. VII. c. 49, s. 3.

PROCEDURE TO OBTAIN ATTACHMENT.

Affidavit. **4.**—(1) Upon affidavit made by a plaintiff or his agent that a defendant is indebted to the plaintiff in a sum exceeding \$100, stating the cause of action, and that the deponent has good reason to believe and does believe that such defendant has departed from Ontario and has gone to some place, stating it, to which he is believed to have fled, or that the deponent is unable to obtain any information as to the place to which he has gone, with intent to defraud his creditors or any of them, or to avoid being arrested or served with process, and was, at the time of his so departing, possessed to his own use and benefit of real or personal property in Ontario not exempt by law from seizure under execution, and upon the further affidavit of two other persons that they are well acquainted with such defendant and have good reason to believe and do believe that he has departed from Ontario with intent to defraud his creditors or any of them, or to avoid being arrested or served with process, a Judge of the Supreme Court or of a County Court may make an order

Order of attachment.

in the Supreme Court for the attachment of the property of such defendant.

(2) Where the sum claimed is within the jurisdiction of the County Court a Judge thereof may in like manner make an order of attachment in that Court. 9 Edw. VII. c. 49, s. 4. Cases within County Court jurisdiction.

5. A copy of the order shall be served upon the defendant. 9 Edw. VII. c. 49, s. 5. Service of order.

6. The order shall remain in force for six months. 9 Edw. VII. c. 49, s. 6. Term of validity.

7. The plaintiff may at any time while the order is in force obtain from the proper officer one or more certified copies thereof, which may be delivered to any sheriff other than the sheriff to whom the original order was delivered, and he may thereunder attach the property of the defendant in his bailiwick. 9 Edw. VII. c. 49, s. 7. Certified copies of order.

WHAT PROPERTY MAY BE ATTACHED—INVENTORY, ETC.

8. All the property of an absconding debtor liable to seizure under execution may be attached in the same manner as it might be seized under execution; and the sheriff to whom the order of attachment is directed shall forthwith take into his charge all such property, according to the exigency of the order, and shall be allowed all necessary disbursements for keeping the same, and he shall immediately call to his assistance two substantial freeholders of his county, and with their aid shall make a just and true inventory of all the personal property, evidence of title or debts, books of account, vouchers and papers that he has attached, and shall return such inventory signed by himself and such freeholders, together with the order. 9 Edw. VII. c. 49, s. 8. Liability of property to attachment.
Duty of sheriff

[For property exempt from execution and attachment see *The Execution Act*, Rev. Stat. c. 80, and *The Wages Act*, Rev. Stat. c. 143.]

PERISHABLE PROPERTY.

9.—(1) Where horses, cattle, sheep or pigs, or perishable property, or such as from its nature cannot be safely kept or conveniently taken care of, are taken under an order of attachment, the sheriff who attaches the same shall have them appraised, on oath, by two competent persons; and, if the plaintiff desires it and deposits with the sheriff a bond to the defendant executed by two freeholders, approved as sufficient by the sheriff, in double the appraised value of the Sale of perishable goods on plaintiff giving security.

property, conditioned for the payment of the appraised value to the defendant, his executors or administrators, together with all costs and damages incurred by the seizure and sale thereof, in case judgment is not obtained by the plaintiff against the defendant, then the sheriff shall proceed to sell all or any of such property at public auction to the highest bidder, giving not less than six days' notice of the sale, unless any of the property is of such a nature as not to allow of that delay, in which case the sheriff may sell it forthwith; and the sheriff shall hold the proceeds for the same purposes as he would hold property seized under the order of attachment.

Application of
proceeds.

Restoration.

(2) If the plaintiff, after notice to him or to his solicitor of the seizure of any property mentioned in subsection 1, does not deposit such bond, then, after four days next after the notice, the sheriff shall be relieved from all liability to the plaintiff in respect to the property so seized, and the sheriff shall forthwith restore the same to the person from whose possession it was taken. 9 Edw. VII. c. 49, s. 9.

WHEN DIVISION COURT ATTACHMENT SUPERSEDED.

Proceedings if
sheriff finds
property in the
hands of a
bailiff or clerk
of a division
court.

Rev. Stat. c. 63.

Rights of
division court
creditor.

Rev. Stat. c. 81.

Costs of bailiff
or constable.

10.—(1) Where the sheriff finds any property, or the proceeds of any property which has been sold as perishable, belonging to the defendant in the custody of a constable or of a bailiff or clerk of a division court under a warrant of attachment issued, or finds money paid into court under a garnishee summons under *The Division Courts Act*, the sheriff shall demand and be entitled to receive the same from the constable, bailiff or clerk, who, on demand and notice of the order of attachment, shall forthwith deliver the same to the sheriff, under the penalty of forfeiting double the value thereof, to be recovered by the sheriff, with costs of suit, and to be by him accounted for after deducting his own costs, as part of the property of the defendant; but the creditor who has sued out the warrant of attachment or taken the garnishee proceedings in the division court may proceed to judgment, and on obtaining judgment, and serving a certificate of the amount thereof, and of the costs, under the hand of the clerk and the seal of the division court, shall be entitled to share in the distribution, if any, by the sheriff under *The Creditors Relief Act*.

(2) The costs and disbursements of such constable or bailiff shall be a first charge upon such property and proceeds and shall be paid by the sheriff upon demand after being taxed by the clerk of the division court. 9 Edw. VII. c. 49, s. 10.

SHERIFF'S COSTS.

Sheriff's costs
and how paid.

11. The costs of the sheriff for seizing and taking charge of property, under an order of attachment, including the sums paid to persons for assisting in taking an inventory,

and for appraising, which shall be paid for at the rate of \$1 for each day actually required for and occupied in making the inventory and appraisal, shall be paid in the first instance by the plaintiff, and when paid shall be taxed to him as disbursements in the action. 9 Edw. VII. c. 49, s. 11.

12. Where the sheriff has made an inventory and appraisal—Cost of inventory—ment on the first order of attachment he shall not be required to make nor shall he be allowed for a new inventory and appraisal upon a subsequent order coming into his hands. 9 Edw. VII. c. 49, s. 12.

RESTORATION OR SALE OF PROPERTY.

13.—(1) Where the defendant or any person on his behalf executes and files in the office from which the order of attachment, or the first order if there are more than one, was issued, a bond to the sheriff with at least two sufficient sureties approved by the proper officer in such office or by the local judge or master, binding the obligors jointly and severally in double the appraised value of the property attached, conditioned that the defendant (naming him) will whenever required by order of the Court or a Judge pay into court the appraised value of the property or so much thereof as will be sufficient to satisfy the claims of all creditors who may be entitled to share in the proceeds of the property, or will produce and deliver to the sheriff the property attached, the Court or a Judge may direct that such property be restored to the debtor. Restoration of goods to debtor on his giving security

(2) If, within one month after the property has been attached, such bond is not executed and filed the Court or a Judge may direct the sheriff to sell any of the goods and chattels which have been attached, except chattels real, upon such terms as to the Court or Judge may seem just. 9 Edw. VII. c. 49, s. 13. Proceedings on default.

COSTS OF FIRST ATTACHMENT.

14. The costs of the first order of attachment and of the execution thereof shall have priority over all execution debts and other costs. 9 Edw. VII. c. 49, s. 14. Costs of first attachment.

[As to sales of shares, etc., in Companies, see secs. 12 to 17 of the Execution Act, Rev. Stat. c. 80.]

ATTACHMENT OF DEBTS DUE TO ABSCONDING DEBTOR.

15.—(1) Where notice in writing of the order of attachment has been duly served by the sheriff, or by or on behalf of the plaintiff, upon a person owing a debt or demand to, or who has the custody or possession of property of the defendant, and such person after such notice pays the debt or Liability of persons paying debts to absconding debtor after notice of attachment.

demand or delivers the property to the defendant or to any one for him, he shall be deemed to have done so fraudulently, and if the other property seized by the sheriff is insufficient to satisfy the claims of all creditors who are or become entitled to be paid out of the same or the proceeds thereof, such person shall be liable to the sheriff for the amount of the debt or demand so paid or for the property so delivered or the value thereof.

Duty of sheriff.

(2) The sheriff shall not be bound to sue until a bond is given by one or more of the plaintiffs or claimants with two sufficient sureties, who may be other of the plaintiffs or claimants, payable to the sheriff by his name of office in double the amount of the debt or of the value of the property sued for, conditioned to indemnify him from all costs, loss and expense which he may incur in the prosecution of the action or to which he may become liable in consequence thereof.

Stay of proceedings taken by absconding debtor.

(3) If, after the notice mentioned in subsection 1, a person indebted to the defendant, or having the custody or possession of any of his property, is sued for the debt, demand or property by the defendant, or by the person to whom he has assigned the debt, demand or property since the date of the order of attachment, he may, on affidavit, apply to the Court or a Judge to stay proceedings in the action until it is known whether the other property seized by the sheriff is sufficient to satisfy the claims mentioned in subsection 1, and the Court or Judge may direct an issue to try any disputed question of fact or make such other order as may seem just. 9 Edw. VII. c. 49, s. 15.

Sale of debts by sheriff.

Rev. Stat. c. 81.

16. If the other property of the defendant proves insufficient to satisfy the executions against him and the claims certified under *The Creditors Relief Act*, and there remain debts due to the defendant, the attempt to collect which would be less beneficial to his creditors than a sale thereof, the sheriff may, by leave of the Court or a Judge, sell such debts by public auction after such advertisement as the Court or Judge may direct and, pending such advertisement, the sheriff shall keep a list of the debts to be sold open for inspection at his office, and shall give free access to all documents and vouchers explanatory of such debts; but every debt amounting to more than \$100 shall be sold separately, unless the Court or Judge shall otherwise direct. 9 Edw. VII. c. 49, s. 16.

[See section 5 of *The Creditors Relief Act*, *Rev. Stat. c. 81*.]

Right of purchaser to sue.

17.—(1) The person who purchases a debt from the sheriff may sue for it in his own name, and a bill of sale, Form 1, executed by the sheriff, shall be *prima facie* evidence of such purchase and of the sheriff's authority to sell without proof

of the handwriting of the sheriff, or of the execution or order, or of the sale.

(2) In an action by the purchaser the defendant may set up any defence which would have availed him against the absconding debtor at the date of the order of attachment. ^{What defence may be set up.} 9 Edw. VII. c. 49, s. 17.

PROCEEDINGS UNDER CREDITORS RELIEF ACT.

18. Where the plaintiff desires to avail himself of the provisions of *The Creditors Relief Act* he may, instead of proceeding with his action, obtain a certificate; and, in that case, may add the costs incurred in the action to the amount of his claim, unless the Court or a Judge otherwise orders. ^{Option of proceeding under Rev. Stat. c. 81.} 9 Edw. VII. c. 49, s. 18.

DELIVERY UP OF PROPERTY.

19. Where an order of attachment has been made but no execution at the suit of any creditor against the property of the debtor is placed in the sheriff's hands for execution within three months thereafter or within such further time as the Court or Judge may direct, all the property of the absconding debtor, or unappropriated money the proceeds of any part of such property remaining in the sheriff's hands, together with all books of account, evidences of title, or of debt, vouchers and papers whatsoever belonging thereto, shall be delivered to the absconding debtor or to his authorized agent, or to the person in whose custody the same were found, or, if taken or received under section 10, to the constable, bailiff or clerk from whom the same were taken or received, upon being repaid the amount, if any, which the sheriff may have paid under the provisions of subsection 2 of section 10, and thereupon the responsibility of the sheriff in respect thereto shall determine, or, if a bond has been given under the provisions of section 13, the bond shall be delivered up to be cancelled. ^{Sheriff's duty and end of his responsibility.} 9 Edw. VII. c. 49, s. 19.

FORM 1.

BILL OF SALE OF A DEBT.

(Section 17.)

In consideration of \$ _____, the receipt whereof I hereby acknowledge:

I, A. B., Sheriff of the County of _____, under and by virtue of an order of attachment dated _____, issued under *The Absconding Debtors Act*, against the real and personal property of C. D., an absconding debtor, and under and by virtue of an order in that behalf, hereby sell and assign to E. F., all claim by the said C. D., against G. H., of (*describing the debtor*), with the evidences of debt and the securities thereto appertaining.

Witness my hand and seal of office, this _____ day of _____ 19

A. B.,
Sheriff of the County of _____

9 Edw. VII. c. 49, Form 1.

CHAPTER 83.

An Act respecting the Arrest of Fraudulent Debtors.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Fraudulent Debtors Arrest* Short title.
Act. 9 Edw. VII. c. 50, s. 1.

2. In his Act,

Interpretation.

(a) "County" shall include District.

"County."

(b) "County Court" shall include District Court.

"County Court."

(c) "Sheriff" shall include any officer to whom an order for arrest is delivered for execution. 9 Edw. VII. c. 50, s. 2.

ORDER FOR ARREST,

3.—(1) Where a person by affidavit of himself or some other person shows to the satisfaction of a Judge of the Supreme Court or of a County Court that he has a cause of action against a person liable to arrest to the amount of not less than \$100, and also such facts and circumstances as satisfy the Judge that there is good and probable cause for believing that such person unless he be forthwith apprehended is about to quit Ontario with intent to defraud his creditors generally or the applicant in particular, the Judge may order that the person against whom the application is made shall be arrested and shall give security for such sum as the Judge thinks fit.

When order for arrest of debtor may be made.

(2) A Judge of a County Court may make an order for arrest in the Supreme Court as well as in his own Court.

Powers of County Court Judge.

(3) The order may be made as well before as after an action has been commenced.

Order before action.

(4) Where the order is made before action, unless an action is commenced and notice thereof is given to the sheriff within two days after the date of the order or within such further time as the Judge may by the order allow the order shall be superseded and the person against whom it was made shall, if under arrest, be entitled to be discharged out of custody. 9 Edw. VII. c. 50, s. 3.

When action to be brought.

Term of
validity.

4. An order for arrest shall be in force for two months from the date thereof and no longer; but on the expiration thereof a new order may be obtained in the manner provided by this Act. 9 Edw. VII. c. 50, s. 4.

Effect of orders
for payment.

5.—(1) Every order of the Supreme Court and of a County Court directing payment of money or of costs, charges or expenses, so far as it relates thereto, shall be deemed a judgment, and the person to receive payment a creditor, and the person to make payment a debtor, within the meaning of this Act.

Who to be
deemed the
plaintiff,
etc., etc.

(2) Where the judgment or order directs the payment of money into Court, or otherwise than to any person, the person having the carriage of the judgment or order, so far as relates to the payment, shall be deemed the person to receive payment or the plaintiff, as the case may be, within the meaning of this Act. 9 Edw. VII. c. 50, s. 5.

Limit of
security in
alimony.

6. Where an order for arrest is made in an action for alimony the amount for which security is to be given shall not exceed what may be considered sufficient to cover the amount of future alimony for two years, besides arrears and costs, but may be for less, at the discretion of the Judge. 9 Edw. VII. c. 50, s. 6.

Concurrent
order for
arrest.

7. Concurrent or duplicate orders may be issued from time to time in like manner and form as the original order, and shall be in force for the same period as the original order and no longer. 9 Edw. VII. c. 50, s. 7.

Costs.

8. Unless otherwise ordered the costs of and incidental to an order for arrest shall be costs in the cause. 9 Edw. VII. c. 50, s. 8.

Order and
copies to be
delivered to
Sheriff.

9. The order and as many copies thereof as there are persons intended to be arrested thereon shall be delivered to the sheriff, and the plaintiff or his solicitor may direct the sheriff to arrest one or more of the persons therein named, which direction shall be obeyed by the sheriff. 9 Edw. VII. c. 50, s. 9.

ARREST OF DEFENDANT.

Time within
which arrests
to be made.

10. The sheriff shall, within two months from the date of the order, but not afterwards, execute the same according to the exigency thereof, and shall upon or immediately after the execution of the same cause one copy thereof to be delivered to the person whom he is directed to arrest, and shall exhibit the original order to him. 9 Edw. VII. c. 50, s. 10.

Indorsement
of date.

11. The sheriff shall, within two days after the arrest, indorse on the order the true date of the arrest. 9 Edw. VII. c. 50, s. 11.

12. No person shall be subject to arrest who, by reason of any privilege, usage or otherwise, is by law exempt therefrom. Privileged persons.
9 Edw. VII. c. 50, s. 12.

13. No person shall be liable to arrest for contempt for non-payment of any sum of money or of any costs, charges or expenses payable by a judgment or order of the Supreme Court or of a Judge thereof, or of a County Court or of a Judge thereof; and no person shall be liable to arrest for non-payment of costs. Arrest for non-payment of money, costs, etc., abolished. 9 Edw. VII. c. 50, s. 13.

14. A married woman shall not be liable to arrest on mesne or final process. No married woman to be arrested. 9 Edw. VII. c. 50, s. 14.

SECURITY IN THE ACTION.

15. The security in the action to be given by the defendant pursuant to the order for arrest, may be by payment into court of the amount mentioned in the order, or by a bond to the plaintiff by the defendant and two sufficient sureties, or, with the leave of the Judge or officer who allows the bond, either one surety or more than two, or, with the plaintiff's consent, by any other form of security. Security by defendant in action. 9 Edw. VII. c. 50, s. 15.

16. Where the security is given by bond the condition shall be that the defendant will pay the amount by any judgment in the action adjudged to be recovered or directed to be paid, either as a debt or for damages or costs, or will render himself to the custody of the sheriff of the county in which the action has been commenced or that the sureties will do so for him. Condition of bond. 9 Edw. VII. c. 50, s. 16.

17. A person who has been indemnified for so doing by a solicitor concerned for the defendant shall not be a surety in such bond. Persons ineligible as sureties. 9 Edw. VII. c. 50, s. 17.

18. Where the plaintiff's claim exceeds \$4,000 it shall be sufficient for each surety to justify in \$4,000 beyond the amount of the claim. Justification when claim over \$4,000. 9 Edw. VII. c. 50, s. 18.

19. The bond shall be filed in the office in which the action was commenced, and may be allowed by the proper officer in such office or by the Local Judge or Master upon service upon the plaintiff or his solicitor of notice of the filing of the bond and of the names and addresses of the sureties and a copy of an appointment from such officer, Local Judge, or Master at least forty-eight hours, unless otherwise directed by the officer, Judge or Master, before the time named in the appointment. Allowance of bond. 9 Edw. VII. c. 50, s. 19.

20.—(1) Where security is desired to be given by payment of money into court the same may be paid in without an Security by payment into Court.

order, and shall stand as security to the plaintiff that the defendant will pay the amount by the judgment in the action adjudged to be recovered or directed to be paid either as a debt or for damages or costs, or will render himself to the custody of the sheriff of the county in which the action has been commenced.

Substitution
of other se-
curity after
payment
into court.

(2) After the payment of money into court, a bond or other security in section 15 mentioned may be substituted therefor, and the money paid in shall be repaid upon the production of a certificate of the allowance of the bond or other security signed by the officer allowing the same or by the plaintiff's solicitor. 9 Edw. VII. c. 50, s. 20.

Repayment of
money paid
in.

Control of
Court.

21.—(1) The money paid in and the security, and all proceedings thereon shall be subject to the order and control of the Court or a Judge.

Discharge of
defendant on
giving
security.

(2) The delivery to the sheriff executing the order for arrest of a certificate of the Accountant of the Supreme Court of the payment of the money into court, or of a certificate of the allowance of the bond or other security signed by the officer allowing the same, or by the plaintiff or his solicitor, to the sheriff, shall entitle the defendant to be discharged out of custody. 9 Edw. VII. c. 50, s. 21.

DELIVERY OF STATEMENT OF CLAIM IN ACTION.

Time for
delivery of
statement of
claim.

22. Where a defendant is taken or detained in custody under an order for arrest in default of giving security, the plaintiff, if he has not already delivered his statement of claim, shall deliver the same within one month after the arrest, or within the time prescribed by the Rules of the Supreme Court, whichever shall be the earlier date, otherwise the defendant shall, unless further time is allowed by the Court or a Judge, be entitled to be discharged out of custody. 9 Edw. VII. c. 50, s. 22.

ORDER TO BRING IN THE BODY.

Order to bring
body into
Court.

23.—(1) Where, on the expiration of an order to return an order for arrest, the sheriff returns *cepi corpus* thereon, an order may thereupon issue requiring the sheriff, within six days after the service of the order, to bring the defendant into court, by bringing in the body or by causing security in the action to be given and, if the sheriff does not obey the order, an attachment may be granted for disobedience thereto.

Attachment
for disobeying
order.

Where sheriff
goes out of
office.

(2) Where a sheriff, before going out of office, makes an arrest, and takes security under the order for arrest and makes a return of *cepi corpus*, the order shall and may, within the time allowed by law, be directed to him notwithstanding that he may be out of office before the order is issued. 9 Edw. VII. c. 50, s. 23.

24. An order shall not be made for setting aside an attachment regularly obtained against a sheriff for not bringing in the body, or for staying proceedings regularly commenced on the assignment of a bail bond, unless the application for the order, if made on the part of the original defendant, be grounded on an affidavit of merits, or, if made on the part of the sheriff, or a surety, or any officer of the sheriff, unless the application be grounded on an affidavit showing that the application is really and truly made on the part of the sheriff, or surety, or officer of the sheriff, as the case may be, at his or their own expense, and for his or their indemnity only, and without collusion with the original defendant. 9 Edw. VII. c. 50, s. 24.

Order to set aside attachment or stay proceedings on bond—affidavit of merits, etc.

APPLICATION FOR DISCHARGE FROM CUSTODY.

25.—(1) A person arrested upon an order for arrest may apply to the Court or a Judge for an order that he be discharged out of custody; and the Court or Judge, subject to appeal, may make such order thereon as may seem just.

Application for discharge from custody by defendant.

(2) A Judge of a County Court making an order for arrest, whether in the Supreme Court or in his own Court, shall, in respect to such order and the arrest made thereupon, possess all the powers of a Judge of the Supreme Court under this section, and may in like manner, on application to him, order the defendant to be discharged out of custody, or make such order therein as to him seems just.

Powers of County Court Judge.

(3) Any such order made by a Judge of a County Court may be discharged or varied by a Divisional Court. 9 Edw. VII. c. 50, s. 25.

Discharge or variance of order.

26. Where the defendant is described in the order for arrest, or affidavit therefor, by initials, or by wrong name, or without a Christian name, he shall not for that cause be discharged out of custody, or the security be delivered up to be cancelled. 9 Edw. VII. c. 50, s. 26.

Misnomer of defendant in order for arrest.

SURRENDER BY SURETIES.

27.—(1) The sureties may at any time surrender their principal to the sheriff of the county in which the principal is resident or found, and the sheriff shall receive the principal into his custody, and give the sureties a certificate under his hand and seal of office of the surrender, for which certificate he shall be entitled to the sum of one dollar.

Surrender of debtor by sureties.

(2) A Judge of the Court in which the action is pending, upon proof of due notice to the plaintiff or his solicitor of the surrender, and upon production of the sheriff's certificate thereof, shall order the security to be cancelled, and thereupon the sureties shall be discharged.

Order to cancel security and discharge of sureties.

Transfer of
person arrested
out of his
county.

(3) Where a person is surrendered by his sureties to the sheriff of any county other than that in which he resides or carries on business he shall be entitled to be transferred to the gaol of his own county on prepaying the expenses of his removal; and the sheriff in whose county he was arrested may transfer him accordingly; but, if the sheriff declines to act without an order of the Court or a Judge, such order may be made on the application of the person arrested, upon notice to the opposite party. 9 Edw. VII. c. 50, s. 27.

WRITS OF CAPIAS AD SATISFACIENDUM.

When *ca. sa.*
may issue
without order.

28.—(1) Where a defendant has been arrested and has given security in the action pursuant to the order for arrest, or is imprisoned or detained in custody in default of giving security, unless he has been discharged under the provisions of section 54, any judgment which the plaintiff may obtain in the action may be enforced by writ of *capias ad satisfaciendum* without an order therefor; but where the defendant is so imprisoned or detained in custody the plaintiff shall issue such writ within fourteen days after he has become entitled to enter final judgment.

When
order for *ca. sa.*
necessary.

(2) Where the defendant has not been arrested, or has been discharged under the provisions of section 54, if the plaintiff, by the affidavit of himself or of some other person shows to the satisfaction of a Judge of the Supreme Court or, where the action is in a County Court, to a Judge of such Court, that he has recovered judgment against the defendant for not less than \$100, exclusive of costs, and also such facts and circumstances as satisfy the Judge that there is good and probable cause for believing either that the defendant, unless he be forthwith apprehended, is about to quit Ontario with intent to defraud his creditors generally or the plaintiff in particular, or that the defendant has parted with his property or made some secret or fraudulent conveyance thereof in order to prevent its being taken in execution, the Judge may order that a writ of *capias ad satisfaciendum* be issued.

Ca. sa. when
returnable.

(3) Every writ of *capias ad satisfaciendum* against a debtor who has not been previously arrested or who has not given security pursuant to an order for arrest shall be returnable immediately after the execution thereof, and shall continue in force for two months from the day of the issue thereof, and no longer, but on the expiration thereof another writ may be obtained upon a Judge's order as provided by subsection 2. 9 Edw. VII. c. 50, s. 28.

Ca. sa. to fix
liability of
sureties.

When
returnable

29.—(1) A writ of *capias ad satisfaciendum*, issued for the purpose of fixing the liability of the sureties, shall be returnable on a day certain to be named therein not later than fourteen days from the date of the teste of the writ, and shall be delivered to the sheriff of the county in which the action was commenced eight clear days before the return day so named.

(2) The sureties shall take notice of the delivery of the writ, and it shall not be necessary for the plaintiff to give them any further or other notice thereof. 9 Edw. VII. c. 50, s. 29. Duty of sureties.

30.—(1) An action shall not be brought upon the bond or other security given in an action pursuant to an order for arrest until after the return of a writ of *capias ad satisfaciendum* for the purpose of fixing the liability of the sureties. Postponement of action on security.

(2) To such a writ the sheriff may return *non est inventus*, without taking any steps to arrest the defendant, unless he is already in, or is rendered into, his custody. 9 Edw. VII. c. 50, s. 30. Return to writ.

31. In an action upon the bond the sureties shall only be liable for the amount recovered by the plaintiff in the action in which the bond was given, and the costs of suit, not exceeding in the whole the amount of the penalty in the bond. 9 Edw. VII. c. 50, s. 31. Limitation of liability of sureties.

32.—(1) Subject to section 27, where the plaintiff brings an action on the bond or other security, the sureties shall be at liberty to satisfy the bond or security by rendering their principal to the custody of the sheriff of the county in which the action was brought at any time within eight days next after service of the writ of summons upon them, but not at any later period; and, upon notice thereof being given to the plaintiff or his solicitor, the action shall be stayed and the plaintiff shall be entitled to the costs of the action up to the date of service of the notice. Sureties' right to surrender their principal. Stay on surrender.

(2) Such costs may be taxed upon production of the notice so served without an order, and if not paid within four days from taxation the plaintiff may, without an order, sign judgment therefor. 9 Edw. VII. c. 50, s. 32. Costs.

PRIVILEGE OF DEFENDANT AS TO COMMITTAL TO GAOL.

33. The sheriff, at the request of the person arrested, and upon being prepaid a sum of money sufficient to cover the sheriff's reasonable fees and expenses incident to the delay, shall grant to such person a delay of twenty-four hours after the arrest before committing him to gaol, and shall take him for the said twenty-four hours to some safe and convenient house in his county. 9 Edw. VII. c. 50, s. 33. Delay of 24 hours before committal.

34. A person arrested and imprisoned in any other county than that in which he resides or carries on business, shall be entitled to be transferred to the gaol of his own county, on prepaying the expenses of his removal; and the sheriff in Right of person arrested to be transferred to gaol of his own county.

whose county he was arrested may transfer him accordingly; but if the sheriff declines to act without an order of the Court or a Judge, such order shall be made on the application of the person arrested, upon notice to the opposite party. 9 Edw. VII. c. 50, s. 34.

SECURITY FROM DEBTORS IN CUSTODY.

How defendant
may be
released.

35.—(1) At any time before the expiration of 10 days from the date of the arrest the defendant shall be entitled to be released from custody upon paying into court, without special order, the amount named in the order for arrest, together with \$40, to answer the costs which may have accrued up to the time limited for giving security in the action pursuant to the order for arrest, or upon giving to the sheriff a bail bond, with two sufficient sureties in a penal sum double the amount named in the order for arrest, and upon payment of the sheriff's fees, including the cost of the bond.

Payment
into court.

Bail bond.

Custody of
money paid.

(2) Money so paid into court shall remain in court, subject to order of the Court or a Judge, as security to the plaintiff that the defendant will cause security in the action to be given pursuant to the order for arrest. 9 Edw. VII. c. 50, s. 35.

Security
from debtors
in custody.

36. The sheriff may take from a debtor confined in the gaol of his county upon mesne process a bond, with not less than two nor more than four sufficient sureties, to be jointly and severally bound in a penal sum of double the amount for which the debtor is so confined, conditioned that the debtor will observe and obey all notices or orders of Court touching or concerning the debtor, or his appearing to be examined *viva voce*, or his returning and being remanded into close custody, and that upon reasonable notice to them or any of them requiring them so to do they will produce the debtor to the sheriff, and also the debtor will, within thirty days, cause the bond, or the bond that may be substituted for the same according to the provisions hereinafter contained, to be allowed by the Judge of the County Court of the County wherein the debtor is confined, and the allowance to be endorsed thereon by the Judge. 9 Edw. VII. c. 50, s. 36.

Affidavits of
sufficiency.

37. The sheriff may also require each surety, where there are only two, to make oath in writing, to be annexed to the bond, that he is a freeholder or householder in some part of Ontario (stating where), and is worth the sum for which the debtor is in custody (naming it) and \$200 more, over and above what will pay all his debts; or where there are more than two sureties, then he may require each surety to make oath as aforesaid, that he is a freeholder or householder as aforesaid, and is worth one-half the sum for which the debtor is in custody (naming it), and \$200 more, over and above what will pay all his debts. 9 Edw. VII. c. 50, s. 37.

38. Upon receipt of the bond, accompanied by an affidavit of a subscribing witness of the due execution thereof, and by the sureties' affidavits of sufficiency, if required by the sheriff, the sheriff may permit and allow the debtor to go out of close custody; and so long as the debtor in all respects observes the conditions of the bond, the sheriff shall not be liable to the party at whose suit the debtor is confined in any action for the escape of the debtor from gaol. 9 Edw. VII. c. 50, s. 38.

When sheriff may allow the debtor out of close custody.

39.—(1) The debtor may apply for the allowance of the bond upon four clear days' notice in writing to the plaintiff or his solicitor, who at the time of the application may object to the sufficiency of the sureties; and if the Judge refuses to allow the bond, the debtor may cause another bond, made to the sheriff in the same terms and under the same conditions, to be executed without further application to the sheriff, and may apply in like manner and upon like notice for the allowance thereof; and the bond, if allowed and endorsed as aforesaid, shall be substituted for and have the like effect in all respects as the bond first given to the sheriff would have had upon the allowance thereof and the like remedies may be had thereon, and the first given bond shall thereupon become void.

Application for allowance of bond.

(2) The sheriff shall, upon reasonable notice given by the debtor, cause the bond to be produced before the Judge. 9 Edw. VII. c. 50, s. 39.

Production of bond before Judge.

40. Upon the allowance being so indorsed the sheriff shall be discharged from all responsibility respecting the debtor, unless he is again committed to the close custody of the sheriff in due form of law. 9 Edw. VII. c. 50, s. 40.

Sheriff's discharge from responsibility.

41. In lieu of giving the bond provided for by section 36 the debtor or any person on his behalf may deposit with the sheriff the amount for which he is arrested, and, where the person is held under an order for arrest, the further sum of \$40, and such deposit shall stand as security in place and for the purposes of the bond provided for by sections 35 and 36, and the money so deposited shall be subject to the order of a Judge of the Court in which the order of arrest was made, but such deposit shall be repayable to the person making it upon the sheriff being furnished with a certificate of the Judge or officer who allows the same, that the bond provided for by sections 35 and 36 has been perfected and allowed. 9 Edw. VII. c. 50, s. 41.

Deposit in lieu of bail on arrest under civil process.

42.—(1) Where the sheriff has good reason to apprehend that a surety after entering into the bond has become insufficient to pay the amount sworn to in his affidavit of sufficiency the sheriff may again arrest the debtor, and detain him in close custody, and such arrest shall discharge the sureties from all liability on the bond.

Re-taking the debtor if sureties become insufficient.

Effect of such arrest on liability of sureties.

(2) The sureties of the debtor may set up the arrest and detention as a defence to an action brought against them upon the bond entered into by them, and the defence, if sustained in proof, shall wholly discharge them.

New bond.

(3) The debtor may again be allowed to go out of close custody on giving to the sheriff a new bond with sureties as aforesaid. 9 Edw. VII. c. 50, s. 42.

Assignment of bail bond.

43.—(1) Where default is made in compliance with the conditions of a bail bond to the sheriff the sheriff shall, upon the request and at the cost of the plaintiff, assign the bond to him, and he may bring an action thereon in his own name.

Discharge of sheriff's liability.

(2) Upon executing the assignment the sheriff shall thenceforth be discharged from all liability on account of the debtor or his safe custody.

Re-arrest on default of security in action.

(3) Where the bond is taken under the provisions of section 35, if the plaintiff does not take an assignment of it within five days after default, the sheriff may rearrest the defendant in any county and bring him into his own county and detain him in custody until he has given and obtained the allowance of security in the action pursuant to the order for arrest. 9 Edw. VII. c. 50, s. 43.

Defendant's right to give security preserved.

44. Notwithstanding the default the defendant may, at any time before judgment in an action brought upon the bail bond to the sheriff or before the expiration of any order to bring in the body, give security in the original action pursuant to the order for arrest. 9 Edw. VII. c. 50, s. 44.

Stay of action on bail bond.

45. The plaintiff shall not be at liberty to proceed upon the bail bond to the sheriff pending an order to bring in the body of the defendant. 9 Edw. VII. c. 50, s. 45.

Power of Court to relieve.

46. Where an action is brought upon the bail bond to the Sheriff the Court or a Judge may upon application in such action give such relief to the plaintiff and defendant in the original action and to the sureties in the bail bond as may be just and reasonable, and the order made on any such application shall have the effect of a defeasance to the bail bond. 9 Edw. VII. c. 50, s. 46.

Surrender by sureties.

47.—(1) The sureties of a debtor may surrender him into the custody of the sheriff at the gaol, and the sheriff or gaoler shall there receive him into custody, and the sureties may set up the surrender, or the offer to surrender and the refusal of the sheriff or gaoler to receive the debtor into custody at the gaol, as a defence to any action brought on the bond for a breach of the condition happening after such surrender or tender and refusal, and the defence, if sustained in proof, shall discharge them.

(2) The debtor may again be allowed to go out of close ^{New bond.} custody on giving to the sheriff a new bond, with sureties as aforesaid. 9 Edw. VII. c. 50, s. 47.

48.—(1) The party at whose suit a debtor has been confined in execution may, at any time while the debtor is at large upon bail, apply to the Court or a Judge for an order for the examination *vivâ voce* on oath of the debtor, touching the matters mentioned in section 52, and if the debtor does not submit himself to be examined pursuant to the order, or refuses to make full answer in respect to the matters touching which he is examined, to the satisfaction of the Court or a Judge, the Court or Judge may order the debtor to be committed to close custody, and the sheriff, on due notice of the order, shall forthwith take the debtor and commit him to close custody until he obtains an order of the Court or a Judge for again allowing him to go out of close custody, on giving the necessary bond as aforesaid, or until he is otherwise discharged in due course of law. ^{Debtor on bail liable to be examined.} ^{Or to be re-committed.}

(2) An order for the discharge of the debtor may be made on his showing that he has submitted himself to be examined and made full answer as aforesaid and has thereafter given to the plaintiff or his solicitor five days' notice of his intention to apply. 9 Edw. VII. c. 50, s. 48. ^{Order for discharge.}

49.—(1) Where a union of counties is dissolved or a county is separated from a union of counties a person arrested, or who has given security in the action before the separation or dissolution and is liable to be imprisoned, shall be imprisoned in the gaol of the county in which he was arrested. ^{Proceedings under bailable process in case of dissolution of a union of Counties.}

(2) All proceedings in the action, and all proceedings after judgment founded on the arrest or the security given, shall be carried on as if the arrest had taken place or the security had been given in such county as a separate county; and all the records and papers relating to the action shall be transmitted to the proper officer of the county in which the debtor was arrested. ^{Further proceedings, where to be carried on.}

(3) Where a debtor or other person is admitted to bail in a union of counties, and the union is afterwards dissolved, or one or more counties are separated therefrom, and such person is afterwards surrendered or ordered to be committed to close custody, he shall be surrendered or committed to the sheriff of the county in which he was arrested, and be imprisoned in the gaol thereof. 9 Edw. VII. c. 50, s. 49. ^{Gaol for debtor where united counties dissolved.}

LIABILITY OF SHERIFF FOR ESCAPE.

50. If a debtor in execution escapes out of legal custody, the sheriff, bailiff, or other person having the custody of the debtor, shall be liable only to an action for damages sustained ^{Extent of sheriff's liability.}

by the person at whose suit the debtor was taken or imprisoned, and shall not be liable to any other action in consequence of the escape. 9 Edw. VII. c. 50, s. 50.

DISCHARGE OF DEBTOR FROM CUSTODY.

A debtor in custody in execution may apply to be discharged.

51. A debtor in close custody in execution or on mesne process, and a debtor arrested under a writ of *capias ad satisfaciendum*, though he is not in close custody but has given bail, may, after giving to the person at whose instance he is in close custody or has been so arrested ten days' notice in writing of his intention to do so, apply to the Court or a Judge to be discharged. 9 Edw. VII. c. 50, s. 51.

Examination of debtor as to his property, etc.

52. Where the notice is given by a debtor in close custody in execution or by a debtor who has been arrested under a writ of *capias ad satisfaciendum* and has given bail, the person at whose instance he is in close custody or has been so arrested may apply to the Court or a Judge for an order that the debtor be examined *viva voce* on oath for the purpose of discovering any property or effects which he is possessed of or entitled to, or which are in the possession or under the control of any other person for the use or benefit of the debtor, or which the debtor having been in possession of may have fraudulently disposed of for the purpose of hindering, delaying, defrauding or defeating his creditors, and touching the debtor's estate and effects and the circumstances under which he contracted the debt or incurred the liability which was the subject of the action in which judgment has been recovered against him, and as to the means and expectations he then had, and as to the property and means he still has, and as to the disposal he may have made of any of his property. 9 Edw. VII. c. 50, s. 52.

Application of debtor for discharge.

53.—(1) Upon an application under section 51, and upon the debtor making oath that he is not worth \$20 exclusive of his goods and chattels exempt from seizure under execution, and, in the case of a debtor in execution, that he has submitted himself to be examined pursuant to any order which may have been made for his examination, or that no order for his examination has been served, and where such examination has been had, if the matter thereof is deemed satisfactory, and, in the case of a debtor confined in close custody on mesne process, that he does not believe the demand of the plaintiff to be just and for that reason and no other resists payment of it and refuses to suffer judgment to be entered against him for the sum sworn to, and if the cross examination, if any, of the debtor upon his affidavit is deemed satisfactory, the debtor shall be discharged from custody, but the discharge shall not be a release or satisfaction of the judgment or of the claim of the plaintiff or deprive the plaintiff of any remedy against the debtor or his property.

Discharge and its effects.

(2) A debtor in close custody upon mesne process may be cross examined upon his affidavit according to the practice of the court as to cross examination upon an affidavit on a motion. 9 Edw. VII. c. 50, s. 53. Cross examination of debtor on affidavit.

54. In the case of a debtor in execution it may be made a condition of his discharge that he shall first, by assignment or conveyance to be approved of by the Court or a Judge, assign and convey to an assignee for the benefit of his creditors any right or interest he may have in and to any property real or personal, credits or effects, other than goods and chattels exempt from seizure under execution, and in the case of a debtor in close custody on mesne process it may be made a condition of his discharge that he shall first suffer the plaintiff to have judgment against him for the sum sworn to or such part thereof as to the Court or Judge may seem just. 9 Edw. VII. c. 50, s. 54. Discharge may be on condition of assignment by debtor.

55. In the case of a debtor in execution, if it appears that the debt for which he is in close custody or has been arrested was contracted by fraud, or breach of trust, or under false pretences, or that he wilfully contracted the debt without having had at the time a reasonable expectation of being able to pay or discharge it and with intent to defraud, the Court or Judge may order the debtor to be remanded into close custody for any period not exceeding twelve months and to be then discharged. 9 Edw. VII. c. 50, s. 55. Recommitment in cases of fraud, etc.

56. Where the discharge has been unduly or fraudulently obtained by a false allegation of circumstances which, if true, would have entitled the debtor to be discharged, he shall, upon the same being made to appear to the satisfaction of the Court or a Judge, be liable to be again taken in execution or remanded to his former custody by order of the Court or Judge. 9 Edw. VII. c. 50, s. 56. Debtor's liability to be retaken in execution.

57. The Court or Judge making an order for the examination of a debtor under this Act may direct the sheriff or gaoler having the custody of the debtor, to bring him before the Court or Judge or before some person to be named in the order for the purpose of being examined, and the sheriff or gaoler shall take the debtor before the Court or Judge or the person so named for examination in the same manner as if the sheriff or gaoler were acting in obedience to a writ of *habeas corpus ad testificandum*. 9 Edw. VII. c. 50, s. 57. Production of debtor for examination.

58. A written order under the hand of the judgment creditor or of the solicitor by whom a writ of *capias ad satisfaciendum* has been issued, shall justify the sheriff, gaoler or officer in whose custody the debtor is under the writ, in discharging him, unless, where the order is given by the solicitor, the party for whom such solicitor professes to act has given written notice to the contrary to the sheriff, gaoler or

officer; but such discharge shall not be a satisfaction of the debt; and nothing herein contained shall justify the solicitor in giving an order for discharge without the consent of his client. 9 Edw. VII. c. 50, s. 58.

SAVING OF REMEDIES UNDER OTHER WRITS OF EXECUTION.

When plaintiff
may issue other
writs.

59. Neither the taking of a debtor in execution under a writ of *capias ad satisfaciendum* nor his imprisonment thereunder or under the provisions of this Act nor his discharge from custody, by the voluntary action of his creditor or under the powers conferred by this Act, shall operate as a satisfaction or extinguishment of the debt or deprive the creditor of the right to take out execution or other process against the property of the debtor or to take any other proceeding against him in the same manner as if the debtor had not been taken in execution or discharged out of custody. 9 Edw. VII. c. 50, s. 59.

APPLICATION OF JUDICATURE ACT AND RULES.

Application of
Rev. Stat. c. 56
and Rules.

60. *The Judicature Act* and Rules of Court shall apply to this Act. 9 Edw. VII. c. 50, s. 60.

CHAPTER 84.

An Act for more effectually securing the Liberty of the Subject.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Ontario Habeas Corpus Act*. 9 Edw. VII. c. 51, s. 1. Short title.

2.—(1) Where a person, other than a person imprisoned for debt, or by process in any action, or by the judgment, conviction or order of the Supreme Court, Court of General Sessions of the Peace or other Court of Record is confined or restrained of his liberty a Judge of the Supreme Court, upon complaint made by or on behalf of the person so confined or restrained, if it appears by affidavit that there is reasonable and probable ground for the complaint, shall award a writ of *habeas corpus ad subjiciendum* directed to the person in whose custody or power the person so confined or restrained is, returnable immediately before the Judge so awarding the same, or before any Judge of the Supreme Court or before a Divisional Court. In what cases hab. corp. ad subjiciendum may be awarded, and by whom.

(2) Instead of awarding the writ the Judge before whom the application is made may direct that the motion for the writ be adjourned to be heard before a Divisional Court. Order adjourning motion for writ. 9 Edw. VII. c. 51, s. 2.

3. The writ may be served either personally by actual delivery thereof to the person to whom the same is directed or by leaving it with his servant or agent at the place where the person is so confined or restrained. 9 Edw. VII. c. 51, s. 3. Service of writ.

4. If the person to whom the writ is directed wilfully neglects or refuses to make a return or pay obedience thereto he shall be deemed guilty of contempt of court, and the Court or Judge, upon proof by affidavit of such wilful neglect, refusal or disobedience, may issue a warrant for apprehending and bringing him before the Court or Judge to the end that he may be bound to His Majesty with two sufficient sureties in such sum as in the warrant is expressed, conditioned that he will appear on the day named in the warrant to answer the matter of the contempt. 9 Edw. VII. c. 51, s. 4. Disobedience. Warrant for contempt.

Committal.

5. In case of neglect or refusal to become bound as aforesaid the Court or Judge may commit such person to the common gaol of the county wherein he resides or may be found there to remain until he becomes bound as aforesaid, or is discharged by order of the Court or a Judge; and if he becomes bound the recognizance shall be returned and filed and shall continue in force until the matter of the contempt has been heard and determined, unless sooner ordered by the Court to be discharged. 9 Edw. VII. c. 51, s. 5.

Certiorari to bring proceedings and papers before the Court for examination.

6. Where a writ of *habeas corpus* is issued under the authority of this Act, or otherwise, the Court or Judge may direct the issue of a writ of *certiorari* directed to the person by whom or by whose authority any person is confined or restrained of his liberty, or other person having his custody or control, requiring him to certify and return to the Court or Judge as by the writ may be provided, all the evidence, depositions, conviction, and all proceedings had or taken, touching or concerning such confinement or restraint of liberty, so that the same may be viewed and considered by the Court or Judge, and that the sufficiency thereof to warrant the confinement or restraint may be determined. 9 Edw. VII. c. 51, s. 6.

Proceedings for inquiring into the truth of the matters alleged in the return.

7. Although the return to a writ of *habeas corpus* is good and sufficient in law the Court or Judge before whom the writ is returnable may examine into the truth of the facts set forth in the return, by affidavit or other evidence, and may order and determine touching the discharging, bailing, or remanding the person.. 9 Edw. VII. c. 51, s. 7.

Appeal from remandment to custody.

8.—(1) Where a person confined or restrained of his liberty, is brought before the Court or Judge upon a writ of *habeas corpus*, and is remanded into custody upon the original order or warrant of commitment, or by virtue of any warrant, order or rule of such Court or Judge, such person may appeal from the decision or judgment of the Court or Judge to a Divisional Court; and thereupon the writ of *habeas corpus*, the return thereto, and the affidavits, depositions, evidence, conviction and other proceedings shall be certified by the proper officer to the Appellate Division.

Court may order discharge.

(2) The Divisional Court shall thereupon hear and determine the appeal without formal pleadings; and if the Court determines that the confinement or restraint is illegal shall so certify to the person having the custody or charge of the person so confined or restrained, and shall order his immediate discharge, and he shall be discharged accordingly. 9 Edw VII. c. 51, s. 8.

Application of Act.

9. The provisions of this Act shall extend to all writs of *habeas corpus* awarded in pursuance of the Act passed in

England in the 31st year of the reign of King Charles the Second, commonly called *The Habeas Corpus Act*, or otherwise in as ample and beneficial a manner as if such writs and the cases arising thereon had been herein specially named and provided for. 9 Edw. VII. c. 51, s. 9.

[See 29-30 Vict. c. 45, *Canada*, which is not included in the *Revised Statutes of Canada*.]

10. The Judges authorized under *The Judicature Act* to make rules may make such rules of practice in reference to the proceedings on writs of *habeas corpus* as may seem necessary or expedient. 9 Edw. VII. c. 51, s. 10.

CHAPTER 85.

An Act for expediting the decision of Constitutional and other Provincial Questions.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

1. This Act may be cited as *The Constitutional Questions Act*. 9 Edw. VII. c. 52, s. 1.

Reference to Court authorized.

2. The Lieutenant-Governor in Council may refer to a Divisional Court or to a Judge of the Supreme Court for hearing and consideration any matter which he thinks fit, and the Court shall thereupon hear and consider the same. 9 Edw. VII. c. 52, s. 2.

Court to certify opinion.

3. The Court shall certify to the Lieutenant-Governor in Council its opinion on the matter referred, accompanied by a statement of the reasons therefor; and any Judge who differs from the opinion may in like manner certify his opinion and his reasons. 9 Edw. VII. c. 52, s. 3.

Notice to Attorney-General of Canada.

4. Where the matter relates to the constitutional validity of any Act of this Legislature, or of some provision thereof, the Attorney-General for Canada shall be notified of the hearing in order that he may be heard if he sees fit. 9 Edw. VII. c. 52, s. 4.

Notice to persons interested.

5. The Court shall have power to direct that any person interested, or where there is a class of persons interested, any one or more persons as representatives of such class, shall be notified of the hearing, and such persons shall be entitled to be heard. 9 Edw. VII. c. 52, s. 5.

Appointment of counsel to argue case for unrepresented interests.

6. Where any interest affected is not represented by counsel, the Court may request counsel to argue the case in such interest, and the reasonable expenses thereof shall be paid out of the Suitors' Fee Fund or by the Treasurer of Ontario out of any money appropriated by this Legislature and applicable for that purpose. 9 Edw. VII. c. 52, s. 6.

Appeal.

7. The opinion of the Court shall be deemed a judgment of the Court, and an appeal shall lie therefrom as from a judgment in an action. 9 Edw. VII. c. 52, s. 7.

8. Where an appeal is had to a Divisional Court, sections ^{Enactments} 3, 4, 5, 6 and 7 shall apply as if the original reference had ^{applicable to} been to the Divisional Court. 9 Edw. VII. c. 52, s. 8.

9. An appeal to His Majesty in His Privy Council from a ^{Appeal to} judgment of any Court on a reference under this Act shall ^{Privy Council.} not be subject to the restrictions contained in *The Privy* ^{Rev. Stat.} *Council Appeals Act.* 9 Edw. VII. c. 52, s. 9. _{c. 54.}

CHAPTER 86.

An Act respecting Damage to Land by Flooding
in Certain Districts.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

1. This Act may be cited as *The Damage by Flooding Act*. 9 Edw. VII. c. 53, s. 1.

Interpretation
"Defendant."

2. In this Act, "Defendant" shall mean a company or person against whom a claim is made under this Act. 9 Edw. VII. c. 53, s. 2.

Territorial
application
of Act.

3. This Act shall apply to the Provisional Judicial Districts, the Provisional County of Haliburton and the Electoral Districts of East Victoria, East Peterborough, North Hastings, North Renfrew and South Renfrew. 9 Edw. VII. c. 53, s. 3.

Damages in
respect of
which applica-
tion may be
made.

4. Where it is claimed that any incorporated company which has had conferred upon it power to acquire or construct and maintain a dam, slide, pier, boom or other work in order to facilitate the transmission of logs or timber down any river or stream in Ontario, or to blast rocks or dredge or remove shoals or other impediments or otherwise improve the navigation of such river or stream, or that any person engaged in lumbering has caused damage to the land of any person by overflowing the same for the purpose of driving logs or timber or for the purpose of a saw-mill, and it is alleged that such damage exceeds \$20, but no greater sum than \$1,000 is claimed therefor, the person whose land is damaged may apply to the Judge of the County or District Court of the county or district within which the land is situate to determine the claim under this Act. 9 Edw. VII. c. 53, s. 4.

Amount.

Form of appli-
cation.

5.—(1) The application may be according to Form 1, and shall be delivered or sent by registered post to the Judge, and there shall be attached thereto an affidavit that the statements made in the application are true.

Notice of
address of
applicant.

(2) A notice giving a post office address to which any notice not requiring action in less than eight days may be sent shall be endorsed on the application or given therein. 9 Edw. VII. c. 53, s. 5.

6.—(1) A copy of the application endorsed with a notice requiring the defendant to answer the same within 21 days after service shall be served on the defendant or, where the defendant is a company, on the president, treasurer, secretary, or manager of the company, or upon an agent of the company having charge of a branch of its business within the county or district, or upon some person who might be served for the company with a writ of summons issued out of the Supreme Court. Service of application.

(2) The defendant may at any time before the application is received by the Judge or served on the defendant tender to the applicant a sum of money in satisfaction of the damages complained of, and if the same is paid into court before the defendant's answer is received by the Judge and if the Judge finds the tender to have been sufficient he shall direct that the costs be paid by the applicant. Tender of amends.

(3) The defendant may pay into court, upon notice to the applicant, a sum of money by way of compensation or amends, and if the sum is found to be sufficient the defendant shall pay to the applicant his costs up to the time of payment into court and the necessary costs of obtaining the same out of court, and the subsequent costs shall be in the discretion of the Judge. Payment into court.

(4) The Court mentioned in subsections 2 and 3 shall be the Division Court for the division within the limits of which the flooded land, or some portion thereof, is situate. 9 Edw. VII. c. 53, s. 6. Jurisdiction of Division Court.

7.—(1) The answer shall give a post office address to which any notice not requiring action in less than eight days may be sent, and shall be delivered or sent by registered post to the Judge and a copy thereof in like manner shall be delivered or sent to the applicant within such twenty-one days. Service of answer.

(2) At any time after the expiry of the twenty-one days the Judge may appoint a time and place for the hearing and may adjourn the hearing from time to time. When appointment for hearing may be made.

(3) In fixing the time for hearing the Judge so far as practicable shall have in view the convenience of the parties and the possibility of their being able at the particular season of the year conveniently to procure the attendance of necessary witnesses. Place and time for the hearing.

(4) The Judge shall have all the powers of amendment of a Judge of the Supreme Court and may, when, in his opinion, it is necessary in order to do complete justice, add all necessary parties to the proceedings upon such terms as to him shall seem proper. 9 Edw. VII. c. 53, s. 7. Power to amend.

Attendance of
witnesses.

8. Any party to the proceeding may obtain from any Division Court of the county or district a subpoena, Form 2, requiring the attendance of any person as a witness before the Judge and also the production at the time and place appointed for taking evidence of any book, paper, document or thing to the production of which the party would be entitled at a trial; and if such person has been paid or tendered his allowance for conduct money and expenses in accordance with the County Court tariff his non-attendance or refusal to be sworn or to give evidence or to produce shall be punishable in the same manner as if the application were an action in such Court. 9 Edw. VII. c. 53, s. 8.

Joinder of
claims.

9.—(1) Where there are several applications the Judge, upon the application of the defendant, may consolidate them, and may order the hearing thereof in such manner as in his opinion will best further the ends of justice and cause the least trouble and expense.

When several
join in one
application.

(2) Where the flooding occurs upon the lands of several persons from the construction of the same works, several persons may join in the same application where the damages of each exceed \$20, but not \$1,000, although in the aggregate they may exceed \$1,000 and may be in respect of different lands.

Description
of lands
and particulars
of claims.

(3) The lands damaged shall be separately described in the application, and the owners of the respective parcels and the amount of the claim of each person shall be stated

Separate
award as to
each claim
—costs.

(4) In the cases mentioned in subsections 1 and 2 there shall be a separate award as to the claim of each person or on each application as the case may be, and the costs may be apportioned as the Judge may deem just.

Form of
awards.

(5) Each award in such cases when filed as hereinbefore provided, shall be a separate judgment, and the execution shall be adapted to the proceedings, and the form thereof may, when necessary, be settled by the Judge.

Idem.

(6) If the application is dismissed, or dismissed as to certain of the applicants, there need not be a separate award as to those in respect of whom it is dismissed. 9 Edw. VII. c. 53, s. 9.

Inspection of
land by judge.

10.—(1) The Judge may take evidence on oath and may personally visit the land in question, before or after the hearing, and may act upon his own inspection, judgment and general knowledge, as well as upon the evidence adduced before him.

Basis of
Compensation.

(2) In fixing compensation the Judge shall take into consideration the increased value, if any, that, by reason of the construction of the works, has been given to any land of the applicant adjacent to the works which have caused the injury and shall deduct such increased value from the amount found in his favour.

(3) The Judge shall take full notes of the oral evidence, ^{Filing evidence.} and shall file all documentary evidence, or a copy thereof, and if he proceeds wholly or partly on his inspection or on any knowledge or skill possessed by him he shall also put in writing a statement thereof sufficiently full to enable a Divisional Court, in case of an appeal, to form a judgment of the weight which should be given thereto. 9 Edw. VII. c. 53, s. 10.

11. The Judge shall make his award in writing, and, if ^{Award.} the award is in favour of the applicant, he shall state whether it is for past damage only or covers all future damage which may be sustained by reason of the land being flooded up to a certain height therein stated and in some way defined. 9 Edw. VII. c. 53, s. 11.

12. The Judge in the award shall give such direction as ^{Costs.} to the payment of costs as he thinks fit, and shall, either by the award or by a subsequent certificate, determine the amount of costs to be paid. 9 Edw. VII. c. 53, s. 12.

13.—(1) The Judge may by the award direct that the ^{Payment of judge's expenses.} expenses and disbursements incurred by him in and about the hearing of the application and the making of the award shall be paid by either or any of the parties at the time of the delivery of the award and that any sum so paid shall be added to or deducted from any other sum or costs ordered to be paid.

(2) Subject to appeal as hereinafter provided the award ^{Finality of award.} shall be final and conclusive between the parties.

(3) If the award covers all future damage it shall operate, after payment of the amount awarded, as a conveyance to the defendant of the easement or privilege in respect of which such damage is awarded; and upon the order of the Judge endorsed on or attached to the award it may be registered in the proper registry office without further proof. ^{When award operates as a conveyance of easement.} ^{Registration.}

(4) The order shall be made upon proof of payment of ^{Upon what proof order may be made.} the amount awarded. 9 Edw. VII. c. 53, s. 13.

14.—(1) An award or certificate may be made a judgment ^{Enforcing award.} of the Division Court of any division within the limits of which the land in respect of which the award is made, or any part of it, is situate, by filing the original or a sworn copy thereof in the office of the clerk, who shall enter the same in the books of the court, and it may thereupon be enforced.

(2) The Clerk shall, by registered letter, immediately ^{Notice.} notify, Form 3, the party against whom the judgment is entered, or his solicitor or agent, where he has appeared by a solicitor or agent, of the fact and of the date and amount of the judgment.

Entries.

(3) The date and fact of mailing such registered letter, shall be forthwith entered by the clerk, in the book in which the judgment is entered.

Rehearing or
new trial.

(4) Where the judgment is entered for damages in excess of \$100, the clerk shall add to the notice a statement, Form 3, that if the party against whom the judgment is entered is dissatisfied with the award he may, within fourteen days from the date of the entry of judgment, or, if reasonable excuse for the delay is shown to the satisfaction of the Judge, at any time within fourteen days after the expiration of the first mentioned fourteen days, apply to the Judge who made the award to set aside the award and the judgment entered thereon and for a rehearing or a new trial; and the proceedings in respect of any such application shall be the same as upon an application for a new trial in a Division Court.

Stay of
execution.

(5) Unless otherwise directed by the Judge execution shall not issue until the expiration of fourteen days from the date of mailing such registered letter and until after any application made for a rehearing or a new trial shall have been disposed of.

Appeal.

(6) Where the judgment is for damages in excess of \$200 either party may appeal from the judgment or decision upon the application for a rehearing or new trial to a Divisional Court; and, subject to Rules of Court, the proceedings on and incidental to the appeal shall be the same as on an appeal under *The Division Courts Act*.

Rev. Stat. c. 63.

Rehearing or
new trial at
instance of
applicant.

(7) Where the applicant's claim exceeds \$100 he shall have the like right to apply for a rehearing or new trial, and where his claim exceeds \$200 he shall have the like right of appeal if the Judge certifies that in his opinion the claim is made in good faith for more than \$100 or \$200, as the case may be. 9 Edw. VII. c. 53, s. 14.

When action
may be
brought in
Division
Court.

15. Where the sum claimed does not exceed \$20 an action for damages in respect of the injuries mentioned in section 4 may be brought in the Division Court for the division within the limits of which the land or any part of it is situate, which shall have jurisdiction to hear and determine the same notwithstanding that a question of title to land or an easement or privilege in connection therewith may be raised; but the judgment or decision of the Court shall not conclude the parties upon any such question in any other action or proceeding. 9 Edw. VII. c. 53, s. 15.

Jurisdiction
where question
of title to
land raised.

16.—(1) The jurisdiction of the Judge under this Act shall not be ousted by the raising of a question of title to land or of the right to an easement or privilege if the Judge is of opinion that the question is not raised in good faith but only for the purpose of ousting his jurisdiction.

(2) Where the Judge is of opinion that the question is^{Idem.} raised in good faith and not for the purpose of ousting his jurisdiction no further proceedings shall be taken upon the application, but either party shall be entitled to an order from a Judge of the Supreme Court removing the proceedings into that Court upon such terms as to the payment of costs or otherwise as he may think fit; and thereafter the action shall proceed in the Supreme Court as if originally commenced therein and as if the defendant had entered an appearance; but the Supreme Court or a Judge thereof may give such direction thereof as to procedure as may be deemed proper.

(3) In the cases provided for in subsection 1 the award^{Saving of rights.} shall conclude the parties only for the purposes of the application and not in any other action or proceeding. 9 Edw. VII. c. 53, s. 16.

■
17. No proceeding under this Act shall be defeated by any^{Formal objections.} formal objection. 9 Edw. VII. c. 53, s. 17.

18. Except in the case of infants, lunatics and persons^{Limitation.} of unsound mind, proceedings under this Act shall be commenced within six months next after the alleged damage was sustained or, if there be a continuance of damage, within six months next after it has ceased, and in any case within six months next after the doing or committing of the damage became known to the applicant and not afterwards. 9 Edw. VII. c. 53, s. 18.

19. The defendant may set up any statutory or other^{Matters of defence.} defence which he might set up if the proceeding were an action for the same cause. 9 Edw. VII. c. 53, s. 19.

20. Nothing in this Act shall affect the provisions of^{Rev. Stat. c. 130 and grants not affected.} *The Rivers and Streams Act*, or of any reservation or condition in any patent or grant from the Crown. 9 Edw. VII. c. 53, s. 20.

FORM 1.

FORM OF APPLICATION.

(Section 5.)

In the matter of (*name here the applicant*), applicant, and (*name here the defendant*) defendant.

To His Honour _____, Judge of the County (or District) Court of the County (or District) of _____

The application of _____, of _____ in the County (or District) of _____, shows:

(1) That the applicant is the patentee (or the locatee) of (*describing the land*).

(2) That the above-named defendant constructed a dam or other works, (*describing them*) and flooded (*fourteen acres*) of the said land, and thereby has done damage to the applicant to the extent of \$ _____.

(3) The following are the particulars of the damage:—

*Fourteen acres of land rendered useless...
Value of crop of oats on the land.....*

\$ _____

(*or as the case may be*).

(4) The applicant is willing to grant to the defendant the right to flood the said (*fourteen acres*) rendered useless (*or as the case may be*).

(*Where a Solicitor or Agent is employed,*) Service of any notice or other paper not requiring action in less than eight days may be made upon me by mailing the same by registered post, addressed to my Solicitor or Agent, A. B., at (*name of Post Office, with any more particular address desired*).

(*Where a Solicitor or Agent is not employed,*) Service of any notice or other paper not requiring action in less than eight days may be made upon me by mailing the same by registered post, addressed to me at (*name of Post Office, with any more particular address desired*).

The applicant prays that his claim may be heard and disposed of under the provisions of *The Damage by Flooding Act*.

Dated this _____ day of _____ 19 ____.

J. T.,

Or

J. T.,

by A. B., his Solicitor or Agent.

9 Edw. VII. c. 53, Form 1.

FORM 2.

FORM OF SUBPENA.

[Seal.]

(Section 8.)

County (or District) of } To C. D.
 } You are hereby required to appear before
 TO WIT: Judge of the County (or District) Court of
 the county (or District) of at in the of , on
 the day of , 19 , at o'clock in the
 noon, being the time and place appointed by the Judge
 for hearing the application of (*James Thompson*) for damages claimed
 by him from (*naming the defendant*) under *The Damage by Flood-*
ing Act, and then and there to testify to all and singular those
 things which you know in respect of the matters in question in the
 application.
 Given under the seal of the Division Court of the County
 (or District) of , at the day of 19 .

E. F.,
Clerk.

NOTE.—Insert a *duces tecum* clause where desired.

9 Edw. VII. c. 53, Form 2.

FORM 3

NOTICE OF JUDGMENT.

(Section 14.)

In the matter of Applicant,
 and Defendant.

Take notice that there was this day duly filed in this Court the
 award of the Judge of the County (or District) court of the County
 (or District) of in the above matter, and
 that the same was thereupon duly entered of judgment against
 the defendant for \$ damage and \$ costs.

[Where the damages exceed \$100 add, If you are dissatisfied with
 the award you may within 14 days from this date apply to the
 Judge for a rehearing or for a new trial.]

E. F.,
Clerk of the Division Court of
 the County (or District) of .

Dated at this day of 19 .

To (*state name and post office address.*)

9 Edw. VII. c. 53, Form 3.

6. ADMINISTRATION OF JUSTICE IN CRIMINAL MATTERS.

1. Magistrates and Procedure.

CHAPTER 87.

An Act respecting Justices of the Peace.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Justices of the Peace Act*. 10 Edw. VII. c. 35, s. 1.

PART I.

QUALIFICATION AND APPOINTMENT OF JUSTICES.

Interpretation.

2. In this Part,—

“Land” shall include lands, tenements and hereditaments and any estate and interest therein. 10 Edw. VII. c. 35, s. 2.

Justices of the Peace *ex officio*.

3. Every Judge of the Supreme Court of Canada, of the Exchequer Court of Canada, and of the Supreme Court of Ontario, and every Judge and Junior Judge of a County or District Court shall be *ex officio* a Justice of the Peace for every county, district and part of Ontario. 10 Edw. VII. c. 35, s. 3.

Idem.

4. Sections 5 to 18 shall not apply to any person who is *ex-officio* a Justice of the Peace. 10 Edw. VII. c. 35, s. 4.

Appointment by the Lieut.-Governor in Council.

5. The Lieutenant-Governor in Council, whenever he thinks fit, may appoint under the Great Seal one or more Justices of the Peace in and for every county, city and town in Ontario and in and for each provisional judicial district or provisional county, or for any part of Ontario not forming part of a county or of a provisional judicial district. 10 Edw. VII. c. 35, s. 5.

6. Where a new general commission of the peace is issued all former general commissions shall become absolutely revoked and cancelled, but nothing in this Part contained shall prevent the re-appointment of any Justice of the Peace named in any former commisison, if the Lieutenant-Governor thinks fit, and the issue of a supplementary commission of the peace for any county or district shall not operate as a revocation of a general commission. 10 Edw. VII. c. 35, s. 6.

Effect of a
new general
commission.

7. Where a town has been erected into a city, and the council of the city duly organized, every commission of the peace for the town shall cease. 10 Edw. VII. c. 35, s. 7.

Revocation of
commissions
when town be-
comes a city.

8. Except where otherwise specially provided all Justices of the Peace appointed in Ontario shall be of the most sufficient persons dwelling in the counties, districts or places for which they are appointed. 10 Edw. VII. c. 35, s. 8.

Qualifications.

9. Except where otherwise specially provided no solicitor shall be a Justice of the Peace during the time he continues to practise. 10 Edw. VII. c. 35, s. 9.

Disability of
practising
solicitors.

10. No sheriff or coroner in and for any county, district or place shall be competent or qualified to be a Justice of the Peace or to act as such for any county, district or place wherein he is sheriff or coroner, under the penalties herein-after mentioned; and every act done by a sheriff or coroner, by the authority of any commisison of the peace, shall be void. 10 Edw. VII. c. 35, s. 10.

Disability of
sheriffs and
coroners.

11.—(1) Except where otherwise provided by law no person shall be or act as a Justice of the Peace who has not in his actual possession, to and for his own proper use and benefit, an estate in land in Ontario, such estate being of or above the value of \$1,200 over and above what will satisfy and discharge all incumbrances affecting the same, and all rents and charges payable out of or affecting the same.

Property
qualification.

(2) Such estate may be an estate in fee simple, absolute, or for life, or for one or more lives, or a term originally of not less than twenty-one years. 10 Edw. VII. c. 35, s. 11.

12. Except in the case of Justices who are not required to possess a property qualification, every Justice of the Peace before he acts as such shall take and subscribe the oath following:

Oath of Quali-
fication.

"I, A. B., do swear, that I truly and *bona fide* have to and for my own proper use and benefit such an estate as qualifies me to act as a Justice of the Peace for the County (or as the case may be) of _____ according to the true intent and meaning of *The Justices of the Peace Act*, (state the nature of the estate and describe the land). So help me God."

Sworn before me, etc.

A. B.

10 Edw. VII. c. 35, s. 12.

Oath of office
and allegiance.

13. A Justice of the Peace shall take and subscribe the oath following:

"I, A. B., of the _____, in the County of _____ do swear that I will well and truly serve our Sovereign Lord King George (*or the reigning Sovereign for the time being*), in the office of Justice of the Peace, and I will do right to all manner of people, after the laws and usages of this Province, without fear or favour, affection or ill will: So help me God."

Sworn before me, etc.

A. B.

10 Edw. VII. c. 35, s. 13.

Limitation of
time for taking
oaths.

14. Every person appointed a Justice of the Peace shall take the oaths of qualification and of office and allegiance within three months from the date of the commission under which he is appointed, otherwise the commission shall, so far as the same relates to him, be deemed to be absolutely revoked and cancelled. 10 Edw. VII. c. 35, s. 14

Filing oaths.

15.—(1) Every oath of qualification and of office and allegiance taken by a Justice of the Peace shall forthwith after the same is taken be transmitted or delivered by him to the Clerk of the Peace of the county or district within which the Justice of the Peace is to act, and shall be filed in the office of the Clerk of the Peace.

Records.

(2) The Clerk of the Peace shall keep posted up in his office a list of the Justices of the Peace who have taken the oath of qualification and the oath of office and allegiance, and the same shall be open to inspection without payment of any fee. 10 Edw. VII. c. 35, s. 15.

Effect of
attested copy
of such oath.

16. The Clerk of the Peace shall, upon demand, forthwith deliver a true and attested copy of the oath to any person paying the sum of twenty-five cents for the same; which copy being produced as evidence on the trial of any proceeding under this Act, shall have the same force and effect as the record of the oath would have if produced. 10 Edw. VII. c. 35, s. 16.

No new oath
required from
persons who
have before
qualified.

17. It shall not be necessary for any Justice of the Peace named in any commission who, after his appointment as such Justice by a former commission, took the oath of office and allegiance to again take such oath before acting under the new commission, nor shall it be necessary for any such Justice who has under any former commission qualified himself in the terms of section 12, and deposited the oath in the office of the Clerk of the Peace, to take any oath of qualification before acting under such new commission, unless the Justice, since he took the oath of qualification, has parted with the estate in right of which he qualified. 10 Edw. VII. c. 35, s. 17.

18.—(1) When not otherwise provided any person who acts as Justice of the Peace without having the prescribed property qualification, or without having taken subscribed and filed with the Clerk of the Peace the oaths of qualification and of office and allegiance, shall incur a penalty of \$50, recoverable under *The Ontario Summary Convictions Act*. Penalty for acting without being qualified or taking oaths. Rev. Stat. c. 90.

(2) Such person may rely upon land not mentioned in the oath of qualification, as constituting the whole or any part of his qualification, at the time of the offence alleged against him. Defendant may rely on other lands

(3) Where proceedings have been instituted under this section and are proceeded with without fraud and with effect no subsequent prosecution shall be brought against the same person for any offence committed before such proceedings were begun. Subsequent prosecution.

(4) The penalties recovered under this Act shall belong to the Crown if the Crown is the prosecutor and if a private person is the prosecutor one-half shall belong to him and the other half shall belong to the Crown. 10 Edw. VII. c. 35, s. 18. Application of penalties.

19. A Justice of the Peace shall have the right, unless another suitable place is provided by the municipality, to use the town hall of any municipality which has no police magistrate for the hearing of cases brought before him, but not so as to interfere with its ordinary use. 10 Edw. VII. c. 35, s. 19. Use of town hall.

[As to appointment of Justices for a limited period for the purpose of taking cognizance of certain offences, see "*The Forest Fires Prevention Act*," R.S.O. c. 241.]

PART II.

RETURNS OF CONVICTIONS BY JUSTICES.

20.—(1) Every Justice of the Peace who convicts and imposes any fine, forfeiture, penalty, or damages, shall make a return thereof and of the receipt and application by him of the money received from the person convicted, in writing under his hand, Form 1, to the Clerk of the Peace on or before the second Tuesday in March, June, September and December in every year for the three months ending on the last day of the next preceding month. Return of fines and penalties imposed; when and to whom to be made.

(2) Every such return shall include all convictions and other matters mentioned in the next preceding subsection, not included in a previous return, and also all cases wherein a fine or any part thereof has been paid since the last return; and in the column for observations shall be written the words, "Paid on case formerly returned." What matters to be included in return.

Where two
Justices act.

(3) In the case of a conviction before two or more Justices, present and joining therein, they shall make the return forthwith. 10 Edw. VII. c. 35, s. 20.

Posting up
returns.

21.—(1) The Clerk of the Peace shall, within two weeks after the time fixed for making the returns, post up in the Court House and also in a conspicuous place in his office a schedule of the returns made, and the same shall be kept so posted up for three months, and for every schedule so made and posted up he shall be allowed a fee of \$4, which, in the case of a County, shall be paid by the Treasurer of the County, and, in the case of a district, by the Treasurer of Ontario out of the Consolidated Revenue Fund.

Filing and
entry.

(2) All returns so received by the Clerk shall be filed by him and shall be entered by him quarterly in a book to be kept for that purpose. 10 Edw. VII. c. 35, s. 21.

Transmission
of returns to
inspectors of
legal offices.

22. The Clerk of the Peace, within twenty days after the end of each General Sessions of the Peace, shall transmit to the Inspector of Legal Offices at Toronto a true copy of all returns made to him, and also a like return of all cases brought before or tried at the Court of General Sessions of the Peace, and at the County or District Court Judge's Criminal Court up to the date of such return. 10 Edw. VII. c. 35, s. 22.

Return of
convictions to
General
Sessions.

23. Nothing herein shall exonerate a Justice of the Peace from duly returning to the Court of General Sessions of the Peace any conviction or record of convictions which is by law required to be so returned. 10 Edw. VII. c. 35, s. 23.

RETURNS OF CONVICTIONS BY POLICE MAGISTRATES.

Record of con-
victions.

24.—(1) Every Police Magistrate, except as hereinafter mentioned, shall keep, at the place where he usually holds his Court, a book ruled in the same manner as Form 1, and shall from time to time enter therein in respect of convictions had before him, whether under Dominion or Provincial authority, the information required to be given in the returns prescribed by this Act, and also a statement of the costs imposed and of the costs collected by him.

Cost of book
in which
record kept.

(2) The cost of the book shall be repaid to him by the municipality of which he is a Police Magistrate; or, if he is a Police Magistrate of territory composed of two or more municipalities, the cost shall be repaid by the county. 10 Edw. VII. c. 35, s. 24.

When entries
to be made.

25. The required entries shall be made forthwith upon the happening of the event in respect of which the information is to be given; and if the fine, forfeiture, penalty, damages or costs imposed are not collected within three

months after the imposition thereof, the cause of the same not having been collected shall be written in the column for observations. 10 Edw. VII. c. 35, s. 25.

26. Any person may inspect such book at any reasonable time upon payment of a fee of ten cents to the clerk, or to the Police Magistrate, if there is no clerk; but any person upon whom a fine, forfeiture, penalty, damages or costs have been imposed, or any person on his behalf, may at any reasonable time without charge inspect the entry in respect to his own conviction; and the book shall at all reasonable times be open to inspection without charge by any officer of the municipality. 10 Edw. VII. c. 35, s. 26.

Record to be open to inspection.

27. The provisions of section 20 shall not apply to a Police Magistrate. 10 Edw. VII. c. 35, s. 27.

Sec. 20 not to apply to a Police Magistrate.

28.—(1) Every Police Magistrate who receives a salary from the Province of Ontario shall yearly on or before the 31st day of December send to the Attorney-General a return showing,

Police Magistrate in receipt of salary to report as to indictable and other offences tried before him, etc.

- (a) the number of indictable and other offences tried by him,
- (b) the number of convictions made and sentence imposed in each case,
- (c) where a fine has been imposed the amount of the fine and to whom the same was paid,
- (d) the amount of fees received,
- (e) the number of committals for trial, and
- (f) the number of miles, if any, travelled by the Magistrate in the discharge of his duty.

(2) The Lieutenant-Governor in Council may prescribe the form in which the return is to be made and may also require any additional particulars to be furnished. 3-4 Geo. V. c. 18, s. 18.

Form of return.

29. Except as hereinafter mentioned every Police Magistrate shall transmit to the Clerk of the Peace of the county or district for which, or within which, he is Police Magistrate, and to the Inspector of Legal Offices at Toronto, on or before the second Tuesday in March, June, September and December of every year, a copy certified by him to be a true copy of the entries in his book with reference to convictions had before him, or fines, forfeitures, penalties, damages or costs imposed by him during the three months ending on the last day of the next preceding month; and he shall also append to the copy a statement of any transactions which have taken place during the time covered by such period with reference to any conviction made, or fine, forfei-

Return of convictions.

ture, penalty, damages or costs imposed by him during any previous period. 10 Edw. VII. c. 35, s. 28.

Duties of clerk
of police court.

30. Where a city or town has a salaried clerk of the Police Court other than the clerk of the council of the city or town the duties directed by this Act to be performed by the Police Magistrate shall, under the like penalties and within the like periods, be performed by the clerk under the supervision of the Police Magistrate. 10 Edw. VII. c. 35, s. 29.

GENERAL PROVISIONS.

Penalty on
Justice of the
Peace neglect-
ing to make
returns, etc.

31.—(1) If a Justice of the Peace or a Police Magistrate before whom a conviction takes place, or who receives any money, neglects or refuses to make the prescribed return, or wilfully makes a false, partial or incorrect return, he shall incur a penalty of \$60 together with full costs of suit.

Defendant to
have solicitor
and client
costs.

(2) If a judgment passes for the defendant, or the plaintiff discontinues the action, the defendant shall recover his full costs of suit as between solicitor and client. 10 Edw. VII. c. 35, s. 30.

Part II. not to
apply to
Toronto.

32. This Part shall not apply to the City of Toronto. 10 Edw. VII. c. 35, s. 31.

PART III.

Interpretation
"Justice of
the Peace."

33. In this Part "Justice of the Peace" shall include Police Magistrate. 10 Edw. VII. c. 35, s. 32.

Fees in certain
cases not other-
wise provided
for.

R.S.C. c. 146.
Rev. Stat. c. 90.

34. In cases not provided for by *The Criminal Code* and *The Ontario Summary Convictions Act* a Police Magistrate not receiving a salary and a Justice of the Peace shall be entitled to receive from the county, or, in the case of a District, from the Province, \$2 for all services connected with the case where the time occupied by the hearing does not exceed two hours, and 50 cents for each additional hour above two hours. 10 Edw. VII. c. 35, s. 33; 1 Geo. V. c. 17, s. 24.

Mileage
allowance.

35. Where the Justice of the Peace, for the convenience of witnesses and others, attends at a distance from his residence to hear the evidence on a criminal charge he shall be entitled to a mileage allowance of 15 cents a mile one way for the distance necessarily travelled, to be paid by the County, or, in the case of a District, by the Province. 10 Edw. VII. c. 35, s. 34.

Penalty for
charging ex-
cessive fees.

36. A Justice of the Peace who wilfully receives a larger fee than authorized by law shall incur a penalty of \$60, together with full costs of suit. 10 Edw. VII. c. 35, s. 35.

[*Note.—As to the powers of a Justice of the Peace to take affidavits and affirmations see The Interpretation Act, R.S.O. c. 1, s. 23 (3).*]

FORM I.

RETURN OF CONVICTIONS.

(To be signed by the convicting justice or justices, see sec. 20.) Form of return
Made by me during the quarter ending in A.D., 19 . of convictions.

Name of the Prosecutor.	
Name of the Defendant.	
Nature of the Charge.	
Date of Conviction.	
Name of Convicting Justice.	
Amount of Penalty, fine or damages.	
When paid or to be paid to said Justice.	
To whom fine paid over by said Justice.	
If not paid, why not, and remarks, if any.	
Amount of Magistrate's fees.	₹
Amount of Constable's fees.	₹
Amount of Witness fees.	₹

CHAPTER 88.

An Act respecting Police Magistrates.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Police Magistrates' Act*. 10 Edw. VII. c. 36, s. 1.

Tenure of office.

2. Every Police Magistrate shall be appointed by the Lieutenant-Governor in Council, and shall hold office during pleasure. 10 Edw. VII. c. 36, s. 2.

IN CITIES AND TOWNS.

In what cases Police Magistrate to be appointed.

3. There shall be a Police Magistrate for every city, and for every town having a population of 5,000 or over, whose salary shall not be less than the following:

Salaries of Police Magistrates in cities.

(a) \$2,000 per annum in a city having a population of 18,000 or over; but in a city having a population of more than 18,000 and less than 25,000 where the Police Magistrate was appointed before the last day of January, 1903, and is permitted by this Act to practise the profession of the law or engage in any business, \$1,400 per annum;

(b) In a city having a population of less than 18,000, \$1,400 per annum, but any salary of a larger amount paid to the Police Magistrate on the 29th day of March, 1873, shall be continued while he remains in office;

In towns.

(c) In towns—where the population is not more than 6,000, \$800 per annum; where the population is over 6,000 and not more than 8,000, \$1,000 per annum, and where the population is over 8,000, \$1,200 per annum. 10 Edw. VII. c. 36, s. 3.

Appointments in towns of less than 5,000.

4.—(1) The Lieutenant-Governor in Council may appoint a Police Magistrate for any other town.

When resolution of council necessary.

(2) No appointment of a salaried Police Magistrate shall, in the first instance, be made for a town not having a population of at least 5,000, until a resolution of the council affirming the expediency thereof is passed by a vote of two-thirds of all the members; and the council may by the resolution fix the salary to be paid to him; but no Police

Magistrate appointed before the 29th day of March, 1873, shall be affected by this subsection. 10 Edw. VII. c. 36, s. 4.

5.—(1) The council of a town having a population of less than 5,000 for which a salaried Police Magistrate has been appointed may, by the vote of two-thirds of all the members, pass a by-law to reduce the salary of the Police Magistrate to a sum less than that fixed by the council in the first instance, and may name a sum in the by-law at which the council desires the salary thereafter to be fixed.

By-law for reduction of salary in towns of less than 5,000.

(2) Upon being furnished with a certified copy of the by-law and with satisfactory proof that the same was passed by a two-thirds vote of all the members of the council, and after notice to the Police Magistrate, the Lieutenant-Governor in Council may fix the salary to be paid after a date to be named in the Order, either at the sum named in the by-law or at such other sum, not exceeding that fixed in the first instance, as the Lieutenant-Governor in Council may deem proper.

Order in Council fixing salary.

(3) The sum fixed by the Order in Council shall thereafter be paid as the salary of the Police Magistrate in lieu of that fixed in the first instance. 10 Edw. VII. c. 36, s. 5.

Payment of salary thereafter.

6.—(1) The Lieutenant-Governor in Council may appoint two Police Magistrates for any city having a population of not less than 200,000, at salaries to be named in the order making the appointment or by a subsequent order, which shall not exceed \$5,000 per annum in the case of the senior Police Magistrate and \$3,500 per annum in the case of the junior Police Magistrate. 10 Edw. VII. c. 36, s. 6 (1); 2 Geo. V. c. 17, s. 18.

Appointment and salaries of two police magistrates in cities over 200,000.

(2) The Lieutenant-Governor in Council may appoint a third Police Magistrate for any city having a population of not less than 200,000, at a salary to be named in the order making the appointment or in a subsequent order, but which shall not exceed the salary paid to the junior Police Magistrate.

Appointment of third police magistrate.

(3) No Police Magistrate appointed under this section shall act as director of a company.

Not to act as director of a company.

(4) The Lieutenant-Governor in Council may appoint a second Police Magistrate for any other city, if a resolution affirming the expediency thereof is passed by a vote of two-thirds of all the members of the council, and the salary of such second Police Magistrate, where the resolution provides that the appointment shall be with salary, shall be paid at the rate determined by the council and approved by the Lieutenant-Governor in Council.

Second Police Magistrate in a city.

(5) Where there are more Police Magistrates than one a division of their duties may be made by the Lieutenant-Governor in Council. 10 Edw. VII. c. 36, s. 6 (2-5).

Division of duties.

Salaries to be paid quarterly.

7. The salary of the Police Magistrate shall be paid by the city or town at least quarterly. 10 Edw. VII. c. 36, s. 7.

Appointment without salary.

8. The Lieutenant-Governor in Council may, notwithstanding anything in this Act, appoint a Police Magistrate without salary for any town for which there is no Police Magistrate. 10 Edw. VII. c. 36, s. 8.

Deputy Police Magistrate.

9.—(1) Where, in the opinion of the Lieutenant-Governor in Council, the due administration of justice requires the appointment of a Deputy Police Magistrate for a city having a population of not less than 40,000 he may appoint a Deputy Police Magistrate accordingly, who shall hold office during pleasure, and without salary unless the municipal council of the city sees fit to provide for the payment to him of a salary.

Idem.

(2) The appointment may be made notwithstanding that the office of Police Magistrate is vacant. 10 Edw. VII. c. 36, s. 9.

Authority of Deputy Police Magistrate.

10. In case of the death, illness or absence of the Police Magistrate, or at his request, a Deputy Police Magistrate shall have authority to perform all the duties and exercise all the powers of and incident to the office of Police Magistrate. 10 Edw. VII. c. 36, s. 10.

Fees of Deputy Police Magistrate.

11. A Deputy Police Magistrate shall be entitled to collect the same fees and emoluments as a Justice of the Peace, and, where the Police Magistrate is paid by salary such fees and emoluments, whether received by the Deputy Police Magistrate as such or as a Justice of the Peace, shall be paid to the municipality; and the other provisions of section 30 shall also apply to such Deputy. 10 Edw. VII. c. 36, s. 11.

Population, how determined.

12.—(1) In ascertaining the population of any city or town the last Dominion census shall govern, unless there has been a subsequent enumeration by the assessors of the city or town in which case such enumeration shall govern.

Finality of question.

(2) Where the authority of the Lieutenant-Governor in Council to appoint a Police Magistrate or a Deputy Police Magistrate depends upon the population of the city, town or place for which the appointment is to be made, no appointment purporting to be made under the authority of this Act shall be open to question on the ground that the population was not in fact such as to authorize the making of the appointment. 10 Edw. VII. c. 36, s. 12.

IN COUNTIES AND DISTRICTS.

Police Magistrate for county with salary.

13.—(1) Where the county council by resolution affirms the expediency of the appointment of salaried Police Magistrates or of a salaried Police Magistrate for the county or part of the county, the Lieutenant-Governor in Council may make

such an appointment, and the salary, which shall not be less than \$600 per annum, shall be fixed and paid by the county.

(2) The Police Magistrate shall also be entitled to be repaid by the county his reasonable and necessary travelling expenses while attending to his duties. Travelling expenses.

(3) If the Police Magistrate is appointed for part of the county, he shall have jurisdiction only in that part. Jurisdiction.

(4) The Police Magistrate shall go from place to place within the county or within the part thereof which is designated in his commission, as occasion may arise, for the performance of his duty. Performance of duties.

(5) Where the county council, not less than twelve months after the appointment of the Police Magistrate, by resolution affirms the expediency of discontinuing the office, his commission shall terminate at the end of the next quarter but one after that in which the resolution was passed. Termination of commission.

(6) Where a resolution is passed under subsection 5 the clerk shall forthwith transmit a certified copy thereof to the Provincial Secretary. Notification of the Provincial Secretary. 10 Edw. VII. c. 36, s. 13.

14. The Lieutenant-Governor in Council may appoint a Police Magistrate for a county or district, or for any part of a county or district, who shall hold office without salary, unless the Legislature, or the county council, or other municipal council, shall see fit to provide for the payment to him of a salary. 10 Edw. VII. c. 30, s. 14. Police Magistrates without salary.

15. The jurisdiction of the Police Magistrate appointed under sections 13 or 14 shall not extend to any city, town or village for which there is a Police Magistrate, nor to any case in which the initiatory proceedings were taken by or before such last mentioned Police Magistrate. 10 Edw. VII. c. 36, s. 15. Jurisdiction.

16. Where a town not separated from a county has a salaried Police Magistrate it shall not be chargeable with any part of the salary and expenses paid to Police Magistrates by the county. 10 Edw. VII. c. 36, s. 16. Liability for salaries.

17. A municipal council shall not reduce the salary of a Police Magistrate without the sanction of the Lieutenant-Governor in Council. 10 Edw. VII. c. 36, s. 17. Reduction of Police Magistrate's salary.

18.—(1) No Justice of the Peace shall admit to bail or discharge a prisoner or adjudicate upon or otherwise act until after judgment in a case arising in a city or town for which there is a Police Magistrate, or arising in a county or part of a county for which there is a Police Magistrate appointed under sections 13 or 14, where the initiatory proceedings were taken before such last mentioned Police Magis- Jurisdiction of Justices where proceedings began before Police Magistrates.

trate, except at the Court of General Sessions of the Peace, or in the case of the illness or absence or at the request of the Police Magistrate.

Idem.

(2) Where the initiatory proceedings in any case are taken before a Police Magistrate no Justice of the Peace shall admit to bail or discharge the prisoner or adjudicate upon or otherwise act in such case, save as mentioned in subsection 1, until after judgment.

Saving.

(3) Nothing in this section shall prevent a Justice of the Peace acting within his territorial jurisdiction from taking an information or issuing a summons or warrant returnable before the proper Police Magistrate. 10 Edw. VII. c. 36, s. 18.

Justice may act
with Police
Magistrate by
request.

19. Nothing in this Act shall prevent a Justice of the Peace from acting with a Police Magistrate, at the request of the Police Magistrate. 10 Edw. VII. c. 36, s. 19.

Residence of
county Police
Magistrates.

20. It shall not be necessary for a Police Magistrate for a county or district or for part thereof to be actually resident within the county or district for which, or for part of which, he is appointed. 10 Edw. VII. c. 36, s. 20.

Place of hold-
ing Court.

21. A Police Magistrate for a county or district, or for part of a county or district, may sit or hold his court within any town in the district or in a town separated from the county, or within a city situate within the limits of the county or district, whether such town or city has a Police Magistrate or not, and may in such town or city hear complaints, and dispose thereof as Police Magistrate in respect of all matters arising within the county or district or the part of the county or district for which he is appointed, and do therein all acts, matters and things in the discharge of the duties and powers of his office. 10 Edw. VII. c. 36, s. 21.

Justice for
county or dis-
trict may hold
court in
city therein.

22. Subject to the provisions of section 18 a Justice of the Peace for a county or district may issue a summons or warrant and hold his court for the trial or investigation of any case in a city where the offence was committed within the county or district in which such city lies or which such city adjoins. 10 Edw. VII. c. 36, s. 22.

Office for
Police
Magistrate.

23. The corporation of a county shall provide a proper office, together with fuel, light and furniture, for the Police Magistrate for the county or for any part thereof. 10 Edw. VII. c. 36, s. 23.

GENERAL PROVISIONS.

Police Magis-
trate *ex-officio*
a Justice of
the Peace.

24. Every Police Magistrate shall be *ex-officio* a Justice of the Peace for the whole county or district, for which or for part of which, he is appointed. 10 Edw. VII. c. 36, s. 24.

25. Every Police Magistrate shall have the right to use any court room or town hall belonging to the county or to any municipality therein for which there is no Police Magistrate, for the hearing of cases brought before him; but in so using the court room or town hall he shall not interfere with the ordinary use of the court room for the other courts or with the use of the town hall for the purposes for which the same is maintained. 10 Edw. VII. c. 36, s. 25.

26. In case of the absence or illness or at the request of a Police Magistrate any two or more Justices of the Peace of the county or district may act in his place in any matter within the jurisdiction of the Police Magistrate, and such Justices, or a majority of them, shall have all the powers of the Police Magistrate. 10 Edw. VII. c. 36, s. 26.

27. Nothing in this Act shall prevent one Justice of the Peace from acting for the Police Magistrate, where by law one Justice of the Peace has jurisdiction. 10 Edw. VII. c. 36, s. 27.

28. A Police Magistrate sitting as such or as *ex-officio* a Justice of the Peace for the county or district shall have power to do alone whatever is authorized to be done by two or more Justices of the Peace. 10 Edw. VII. c. 36, s. 28.

29.—(1) The following oath of office and allegiance shall be taken and subscribed by every Police Magistrate and Deputy Police Magistrate before acting.

I, A. B., of the of in the county (or district) of do swear that I will well and truly serve Our Sovereign Lord King George, in the office of Police Magistrate, (or Deputy Police Magistrate, as the case may be) and I will do right to all manner of people according to law, without fear or favour, affection or ill will. So help me God.

Sworn etc.

A. B.

(2) The oath of office and allegiance shall forthwith be transmitted or delivered by the Police Magistrate or Deputy Police Magistrate to the Clerk of the Peace of the county or district within which the Police Magistrate or Deputy Police Magistrate is to act, and shall be filed in the office of the Clerk of the Peace. 10 Edw. VII. c. 36, s. 29 (2).

30. A Police Magistrate shall be entitled to collect the same fees and emoluments as a Justice of the Peace; and, where a Police Magistrate is paid by salary, the fees and emoluments received by him as Police Magistrate shall be paid to the municipality if the salary is provided by such municipality, but if the salary is provided by the Crown such fees and emoluments shall be paid to the Treasurer of Ontario; but this section shall not authorize the imposition of such fees by a Police Magistrate who is paid by salary upon an Inspector of Licenses or upon a Provincial officer appointed under

Rev. Stat.
c. 215.

The Liquor License Act in respect of a case or complaint prosecuted by him under that Act. 10 Edw. VII. c. 36, s. 30; 3-4 Geo. V. c. 18, s. 19.

When Police
Magistrate
need not act.

31. A Police Magistrate shall not be bound to act in any case arising without the limits of the city, town or place for which he is Police Magistrate, but if he does so act he shall be entitled to collect for his own use the same fees and emoluments as a Justice of the Peace. 10 Edw. VII. c. 36, s. 31.

Restrictions
upon
practising.

32.—(1) No Police Magistrate, and no partner or clerk of a Police Magistrate, shall act as agent, solicitor or counsel in any cause, matter, prosecution, or proceeding before a Police Magistrate or a Justice of the Peace.

Where Police
Magistrate not
to practise
law, etc.

(2) A Police Magistrate of a city having a population of more than 18,000 shall not practise the profession of the law or engage in any business while holding such office, but this shall not apply to a Deputy Police Magistrate or to a Police Magistrate appointed on or before the 5th day of May, 1894, or to the Police Magistrate of the City of Kingston now in office. 10 Edw. VII. c. 36, s. 32.

Police Magis-
trate need not
attend on
holidays.

33. Except in case of urgent necessity a Police Magistrate shall not be required to attend at the police office on a holiday, or on any day set apart by the municipal council as a civic holiday. 10 Edw. VII. c. 36, s. 33.

Provision for
absence or
illness of police
magistrate.

34. In case of the illness or absence from the county or district of a Police Magistrate, any other Police Magistrate, whether appointed for the county or district or for a city, town, village or other place therein, shall have all the powers and may perform all the duties of the Police Magistrate during such illness or absence, and shall also have jurisdiction and power to continue and complete any proceeding begun before him, notwithstanding that the first mentioned Police Magistrate may in the meantime have recovered or returned. 10 Edw. VII. c. 36, s. 34.

CHAPTER 89.

An Act to protect Public Authorities from Vexatious Actions.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Public Authorities Protection Act*. 1 Geo. V. c. 22, s. 1. Short title.

2. In this Act “Justice of the Peace” shall include a Interpretation. Police Magistrate, a person who is *ex officio* a justice of the peace, and a person who has by law the powers of a justice of the peace, either generally or with regard to any particular matter. 1 Geo. V. c. 22, s. 2.

ACTIONS AGAINST JUSTICES OF THE PEACE.

3. No action shall lie or be instituted against a justice of the peace for any act done by him in the execution of his duty as such justice with respect to any matter within his jurisdiction as such justice, unless the act was done maliciously and without reasonable and probable cause. 1 Geo. V. c. 22, s. 3. Conditions of liability. Where jurisdiction.

4.—(1) For any act done by a justice of the peace in a matter in which by law he has not jurisdiction, or in which he has exceeded his jurisdiction, or for any act done under a conviction or order made or a warrant issued by him in such matter, any person injured thereby may maintain an action against the justice in the same case as he might have heretofore done, and it shall not be necessary to allege or prove that the act was done maliciously and without reasonable and probable cause. Where no jurisdiction.

(2) Where a conviction or order has been made by a justice of the peace, and a warrant of distress or of commitment has been issued thereon by some other justice of the peace, *bona fide* and without collusion, no action shall be brought against the justice who issued the warrant by reason of any defect in the conviction or order, or for any want of jurisdiction in the justice who made the same, but the action, if any, shall be brought against the justice who made the conviction or order. Where conviction, and execution by different justices.

No action
until
conviction
or order
quashed.

(3) No such action as is mentioned in this section shall be brought for anything done under a conviction or order or under a warrant issued by a justice of the peace to procure the appearance of the party, which has been followed by a conviction or order in the same manner, until the conviction or order has been quashed.

No action
where
summons
previously
served and not
obeyed.

(4) Where such warrant has not been followed by a conviction or order, or is a warrant upon an information for an indictable offence, if a summons was issued previously to the warrant, and the summons was served upon such party, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of the summons, no such action shall be maintained against the justice for anything done under the warrant. 1 Geo. V. c. 22, s. 4.

Where acting
under order
of the Court.

5. Where a justice of the peace refuses to do any act relating to the duties of his office as such justice, the person requiring the act to be done may, upon affidavit stating the facts, and upon six days' notice to the justice, and also to the party to be affected by the act, apply to the Supreme Court, or a Judge thereof, or to the Judge of the County or District Court of the county or district in which the justice resides, for an order directing the act to be done; and the Court or Judge may make such order upon such terms as to costs as may be deemed proper, and the justice, upon being served with the order, shall obey the same, and shall do the act required; and no action or proceeding shall be commenced or prosecuted against him for having obeyed the order and done the act required. 1 Geo. V. c. 22, s. 5.

Where conviction, etc.,
confirmed on
appeal.

6. Where a justice of the peace has issued a warrant of distress or a warrant of commitment upon a conviction or order which either before or after the issuing of the warrant has been confirmed upon appeal, no action shall be brought against the justice by reason of any defect in the conviction or order for anything done under the warrant. 1 Geo. V. c. 22, s. 6.

Where
protection may
be claimed
notwithstanding
defects in
proceedings.

7.—(1) No defect in an information taken before or in a warrant issued by a justice of the peace shall prevent him from claiming the benefit and protection of this Act if the Court is of opinion that he acted in good faith, and that the informant or complainant intended, by the facts stated to the justice, to charge the commission of an offence which, if the same had been set forth in proper form in the information or warrant, would have been one within the jurisdiction of the justice; and in such case the informant or complainant shall be liable as if the information had charged in proper form the commission of the offence so intended to be charged.

(2) An action shall not be brought against a person who has, in good faith, intended to charge another person, who has been arrested by the direction of the person so charging the offence under a warrant issued by a justice of the peace, with the commission of the offence in consequence only of the information sworn before a justice of the peace, or the warrant issued by him not containing a proper description of the offence. 1 Geo. V. c. 22, s. 7.

Non-liability of informant where offence not properly described.

8. Where an order is made quashing a summary conviction the Court may provide that no action shall be brought against the justice of the peace who made the conviction. 1 Geo. V. c. 22, s. 8.

Conditions on quashing convictions.

9. If an action is brought where by this Act it is enacted that no action shall be brought under the particular circumstances a Judge of the Court in which the action is pending may set aside the proceedings in the action. 1 Geo. V. c. 22, s. 9.

Setting aside proceedings where action not maintainable.

10. Where the plaintiff is entitled to recover, and he proves the levying or payment of any penalty or sum of money under any conviction or order as part of the damages he seeks to recover, or if he proves that he was imprisoned under the conviction or order, and seeks to recover damages for the imprisonment, he shall not be entitled to recover the amount of the penalty or sum so levied or paid, or any sum beyond the sum of three cents as damages for the imprisonment, or any costs of suit, if it is proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and, with respect to the imprisonment, that he has undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay. 1 Geo. V. c. 22, s. 10.

Damages nominal in certain cases.

Imp. Act, 11 and 12 V. c. 44, s. 13.

11.—(1) No action shall lie against a police magistrate for or by reason of any process issued, or conviction made by, or any proceeding taken before him alone, or authorized by him, in good faith, in any case which was not cognizable by such police magistrate, or not by him sitting alone, or which should have been heard by two justices of the peace, or by the mayor of a city or town within the county or district, or part of a county or district, for which the police magistrate was appointed.

where Police Magistrates, protected for certain mistakes in jurisdiction.

(2) This section shall not prevent an action from being maintained where and so far as the action would be maintainable against the mayor or justices of the peace if the process had been issued or conviction made by, or proceeding taken before, or authority given by him or them, in a matter in which he or they had jurisdiction.

Saving.

Constable or
Officer.

(3) No action shall lie against a constable or peace officer for anything done by him under and by virtue of process issued or authority given, as in subsection 1 mentioned, unless the action would be maintainable if the process had been issued or authority given by a person or persons legally qualified to issue the process or give the authority. 1 Geo. V. c. 22, s. 11.

ACTION AGAINST CONSTABLE, DIVISION COURT BAILIFF OR OTHER OFFICER.

Liability of
officer acting
under warrant.

12.—(1) No action shall be brought against a constable, division court bailiff or other officer, or against any person acting by his order and in his aid, for anything done in obedience to a warrant issued by a justice of the peace or clerk of a division court until demand has been made or left at his usual place of abode by the person intending to bring such action or by his solicitor or agent in writing, signed by the person demanding the same, of the perusal and copy of such warrant and the same has been refused and neglected for six days after such demand.

Conditions of
liability.
24 Geo. II.,
c. 41, s. 6.
(Imp.)

Dismissal
of action.

(2) If, after such demand and compliance therewith by showing the warrant to and permitting a copy thereof to be taken by the person demanding the same, an action is brought against such constable, bailiff or officer, or such person so acting, for any cause without making the justice or clerk who issued the warrant a defendant, on the production and proof of the warrant at the trial of the action judgment shall be given for the defendant notwithstanding any defect of jurisdiction in such justice or clerk.

Action brought
jointly against
justice or clerk
and constable
or bailiff.

(3) If the action is brought jointly against such justice or clerk and such constable or bailiff or other officer or person so acting, on proof of such warrant judgment shall be given for such constable or bailiff or other officer and for such person so acting notwithstanding such defect in jurisdiction.

Costs.

(4) If the judgment is given against the justice or clerk the plaintiff shall, in addition to any costs awarded to him, be entitled to recover such costs as he is liable to pay to the defendant for whom judgment is given. 2 Geo. V. c. 17, s. 20 (1).

ACTIONS AGAINST PUBLIC AUTHORITIES.

An action
against a
person for any
act done under
public
authority
to be begun
within six
months.
Imp. Act,
56 and 57 Vict.
c. 61, s. 1.

13.—(1) No action, prosecution, or other proceeding shall lie or be instituted against any person for an act done in pursuance or execution or intended execution of any statute, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such statute, duty or authority, unless it is commenced within six months next after the act, neglect or default complained of, or, in case of continuance of injury or damage, within six months after the ceasing thereof.

(2) Where in any such action costs are awarded to the ^{Costs.} defendant the Court may direct that they be taxed as between solicitor and client.

(3) If, in the opinion of the Court, the plaintiff has not ^{Idem.} given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the court may award to the defendant costs to be taxed as between solicitor and client.

(4) A sheriff, acting under a writ of execution or other ^{Case of Sheriff.} process, shall be deemed to be a person acting in the discharge of a public duty or authority within the meaning of this section. 1 Geo. V. c. 22, s. 13.

14. No action or other proceeding shall be commenced or ^{Persons obeying writ of mandamus protected.} prosecuted against any person for or by reason of anything done in obedience to a *mandamus* or mandatory order. 1 Geo. V. c. 22, s. 14.

15.—(1) No action shall be brought against a judge, ^{Protection of those acting under ultra vires statutes.} justice of the peace, or officer for anything done by him under the supposed authority of a statute of Ontario or of the Dominion of Canada which was beyond the legislative jurisdiction of this Legislature or of the Parliament of Canada, as the case may be, if the action would not lie against him had the statute been within the legislative jurisdiction of the Legislature or Parliament which assumed to enact the same.

(2) Where, notwithstanding the provisions of subsection 1, ^{Where notwithstanding action is sustainable, extent of liability.} an action is maintainable against a judge, justice of the peace or officer for anything done by him under the authority of such statute the action shall only be maintainable subject to the like provisions as the action would be subject to if the statute was valid; and the like damages, and no more, shall be recoverable in such action as under the like circumstances could have been recovered if the statute had been valid. 1 Geo. V. c. 22, s. 15; 2 Geo. V. c. 17, s. 20 (2).

SECURITY FOR COSTS.

16.—(1) Where an action is brought against a justice of the peace or against any person for any act done in pursu- ^{Applications for security for costs.} ance or execution or intended execution of any statute, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such statute, duty or authority, the defendant may at any time after the service of the writ apply for security for costs.

(2) The application shall be upon notice and an affidavit ^{Procedure upon application.} of the defendant or his agent showing the nature of the action and of the defence, and showing to the satisfaction of the Court or Judge that the plaintiff is not possessed of property sufficient to answer the costs of the action in case a

judgment should be given in favour of the defendant, and that the defendant has a good defence upon the merits, or that the grounds of action are trivial or frivolous; and thereupon the Court or Judge may make an order that the plaintiff shall give security for the costs to be incurred in such action. 1 Geo. V. c. 22, s. 16.

APPLICATION OF ACT.

Application
of Act.

17. This Act shall not apply to a municipal corporation. 1 Geo. V. c. 22, s. 17.

CHAPTER 90.

An Act respecting Procedure before Justices of the Peace and Summary Convictions.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Ontario Summary Convictions Act*. 10 Edw. VII. c. 37, s. 1. Short title.

2. In this Act "Justice" shall mean a justice of the peace and shall include two or more justices sitting and acting together, a police magistrate, and every other officer or functionary having, for the purposes of any Act, the authority of a justice of the peace or police magistrate. 10 Edw. VII. c. 37, s. 2. Interpretation "Justice."

APPLICATION OF ACT.

3. Subject to any special provision otherwise enacted with respect to such offence, act or matter, this Act shall apply to Application of Act.

(a) every case in which any person commits, or is suspected of having committed, any offence or act over which this Legislature has legislative authority, and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;

(b) every case in which a complaint is made to a Justice in relation to any matter over which this Legislature has legislative authority and with respect to which such Justice has authority by law to make an order for the payment of money or otherwise. 10 Edw. VII. c. 37, s. 3.

POWERS AND DUTIES OF JUSTICE.

4. Except where otherwise provided Part XV and sections 1121, 1124, 1125 and 1142 of *The Criminal Code* shall apply Application of Criminal Code. R.S.C. c. 146. *mutatis mutandis* to every such case as if the provisions thereof were enacted in and formed part of this Act. 10 Edw. VII. c. 37, s. 4.

5. Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the Act, order, by-law, regulation or other document creating the offence, may be proved Pleading exceptions.

by the defendant, but need not be specified or negatived in the information or complaint, and if so specified or negatived no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant. 10 Edw. VII. c. 37, s. 5.

Effect of giving
time for
payment.

6. Where a conviction or order of a Justice adjudges that a fine, penalty or costs be paid the conviction or order shall not be void nor shall the right to collect any fine or costs or to enforce any penalty under any such conviction or order be impaired because of time having been allowed for the payment of the sum, or any part thereof, or because of payment having been received of part of the sum adjudged to be paid, or because of the Justice having accepted security for the payment of the same, of any part thereof. 10 Edw. VII. c. 37, s. 6.

Payment of
prosecutor's
costs.

7.—(1) The Justice may award and order, in and by the conviction or order, that the defendant shall pay to the prosecutor or complainant such costs as to the Justice seem reasonable, the same not being inconsistent with the fees established by law to be taken on proceedings had by and before Justices of the Peace.

Payment of
defendant's
costs.

(2) Where the Justice dismisses the information or complaint he may by the order of dismissal award and order that the prosecutor or complainant shall pay to the defendant such costs as to the Justice seem reasonable, the same not being inconsistent with the fees established by law to be taken on proceedings had by and before Justices of the Peace.

Recovery of
costs.

(3) The sums allowed for costs shall be stated in the conviction or order, and shall be recoverable in the same manner and under the same warrants as a penalty adjudged to be paid by the conviction or order, and such costs shall extend to and include costs and charges of the distress, of the commitment, and of conveying the defendant to prison, and it shall not be necessary to include them in the amount mentioned in the conviction or order, but the amount thereof in case of a warrant of commitment shall be mentioned on the warrant when it is delivered to the gaoler, and in the case of a distress the person by whom the same are payable shall be entitled on demand to a statement of the amount thereof.

Recovery of
costs where no
penalty.

(4) Where there is no penalty to be recovered, or where the information or complaint is dismissed the costs shall be specified in the order and shall be recoverable only by distress and sale of the goods and chattels of the party. 10 Edw. VII. c. 37, s. 7.

Return of
convictions.

8. Every Justice shall forthwith after making a conviction or order or an order of dismissal transmit to the Clerk of the Peace for the county or district the conviction or order or order of dismissal together with the information, depositions and other papers relating to the case and any recognizances

in respect of which proceedings are required to be taken in the Court of General Sessions of the Peace. 10 Edw. VII. c. 37, s. 8.

9.—(1) Where a Justice of the Peace is satisfied by information upon oath, Form 1, that there is reasonable ground for believing that there is any building, receptacle or place—
Search warrant when to be issued.

(a) anything upon or in respect of which an offence against a statute of Ontario has been or is suspected to have been committed; or,

(b) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence;

he may at any time issue a warrant, Form 2, under his hand authorizing some constable or other person named therein to search such building, receptacle or place for any such thing, and to seize and carry it before the Justice issuing the warrant or some other Justice for the same territorial division to be by him dealt with according to law.

(2) Every search warrant shall be executed between sunrise and sunset, unless the Justice shall by the warrant authorize the constable or other person to execute it at night.
When to be executed.

(3) When any such thing is seized and brought before a Justice he may detain it, taking reasonable care to preserve it until the conclusion of the investigation: and, if no one is convicted, the Justice shall direct such thing to be restored to the person from whom it was taken unless he is authorized or required by law to dispose of it otherwise. 10 Edw. VII. c. 37, s. 9.
How things seized to be dealt with.

APPEALS FROM CONVICTIONS.

10.—(1) Unless it is otherwise provided in the Act under which a conviction takes place or an order is made by a Justice for the payment of money or dismissing an information or complaint, any person who thinks himself aggrieved by any such conviction or order or order of dismissal, the prosecutor or complainant as well as the defendant, may appeal where the conviction adjudges imprisonment only to the Court of General Sessions of the Peace, and in all other cases to the Division Court of the division in which the cause of the information or complaint arose.
Appeals from conviction or order.

(2) Where, by any statute of Ontario, an appeal is given to the Judge of the County or District Court without a jury from a summary conviction had or made before a Justice, and no special provision is made therefor, the appeal shall be to the Division Court of the division in which the cause of the information or complaint arose. 10 Edw. VII. c. 37, s. 10.
Appeals to Division Court

Certiorari not to be granted for removal of order or conviction except when appeal would not afford adequate remedy.

(3) No such order or conviction shall be removed into the Supreme Court by writ of *certiorari* or otherwise except upon the ground that the appeal provided by any Act under which the conviction takes place or the order is made or by this Act would not afford an adequate remedy. 2 Geo. V. c. 17, s. 19.

APPEALS TO APPELLATE DIVISION.

Appeal from High Court Division to Appellate Division.

11.—(1) If the Attorney-General of Canada or the Attorney-General of Ontario certifies that, in his opinion, a judgment or decision of the Supreme Court or a Judge thereof upon an application to quash a conviction made under an Act of Ontario creating an offence punishable by summary conviction before a Justice or to discharge a prisoner who is held in custody under such conviction, whether the conviction has been quashed or the prisoner discharged or the application refused, involves a question on the construction of *The British North America Act*, and is of sufficient importance to justify an appeal, an appeal at the instance of either Attorney-General or of any party who thinks himself aggrieved shall lie therefrom to a Divisional Court without giving security for costs.

Imp. 30-31 V. c. 3.

(2) Upon such certificate being filed with the Registrar of the High Court Division he shall certify under the seal of the Supreme Court the proceedings had in such Court to the Appellate Division, and a Divisional Court shall thereupon hear and determine the appeal without formal pleadings, and shall make such order for carrying its judgment into effect as the circumstances of the case require.

Appeal from General Sessions.

(3) If the Attorney-General of Ontario certifies that in his opinion a judgment or decision of a Court of General Sessions of the Peace allowing or dismissing an appeal under this Act, involves a question of law of sufficient importance to justify an appeal, an appeal shall lie therefrom to a Divisional Court without giving security for costs.

Enforcing conviction or order.

(4) After the decision of the Divisional Court the Justice in relation to whose determination the appeal was had, or any other Justice exercising the same jurisdiction, shall have the same authority to enforce any conviction or order which has been affirmed, amended or made by the Divisional Court, as the Justice who originally decided the case would have had to enforce his determination if the same had not been appealed against; and no action shall be brought against the Justice for enforcing the conviction or order by reason of any defect in the same.

Costs.

(5) The defendant shall in no event be ordered to pay any costs on an appeal brought by the Attorney-General for Canada or by the Attorney-General of Ontario under this section.

Rules of Court.

(6) The Judges of the Supreme Court may make rules for carrying into effect the jurisdiction by this section conferred on the Appellate Division. 10 Edw. VII. c. 37, s. 11.

WHEN AMENDED ACTS OF CANADA TO APPLY.

12. If the Parliament of Canada amends any statute, the provisions of which are by this Act declared to be applicable, the amendment shall not be applicable until after the termination of the Session of this Legislature held next after the passing of the amending statute. 10 Edw. VII. c. 37, s. 12.

When amendments of Dominion Acts shall take effect under this Act.

FORM 1.

INFORMATION TO OBTAIN A SEARCH WARRANT.

Province of Ontario, }
County of }

The information of A. B., of _____, in the said County, taken _____ day of _____, in the year _____, before me, C. D., Esq., a Justice of the Peace for the County (or District, etc.) of _____ who says that (*insert general description of things to be searched for and offence in respect of which search is made*), and that he has just and reasonable cause to suspect, and suspects, that the said goods and chattels, or some part of them, are contained in the (*dwelling-house etc.*) of E. F., of _____, in the said County (or District, etc.) (*here add the causes of suspicion, whatever they may be*). Wherefore (*he*) prays that a search warrant may be granted to him to search the (*dwelling-house, etc.*) of the said E. F. as aforesaid, for the said goods and chattels.

Sworn (*or affirmed*) before me
the day and year first mentioned,
at _____
in the said County of _____

C. D.,
J.P. for (*Name of County or District*).

10 Edw. VII. c. 37, Form I.

FORM 2.

SEARCH WARRANT.

Province of Ontario }
County of }

To all or any of the constables and other peace officers in the said County of _____

Whereas it appears on the oath of A. B., of _____, that there is reason to suspect that (*describe things to be searched for and offence in respect of which search is made*) are contained in _____, at _____

This is, therefore, to authorize and require you to enter between the hours of (*as the Justice shall direct*) into the said premises, and to search for the said things and to bring the same before me or some other Justice of the Peace.

Dated at _____, in the said County of _____
this _____ day of _____, in the year _____

C. D.,
J.P. for (*Name of County or District*).

10 Edw. VII. c. 37, Form 2.

2. Other Officers of Justice.

CHAPTER 91.

An Act respecting Crown Attorneys.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- Short title. **1.** This Act may be cited as *The Crown Attorneys Act*. 9 Edw. VII. c. 55, s. 1.
- Appointment. **2.** The Lieutenant-Governor in Council may appoint two Crown Attorneys for the County of York, one to be designated the Crown Attorney for the County of York, and the other the Crown Attorney for the City of Toronto, and also one Crown Attorney for each of the other counties and for each Provisional Judicial District in Ontario. 9 Edw. VII. c. 55, s. 2.
- Qualification. **3.** No person shall be appointed a Crown Attorney, or shall act in that capacity, who is not a barrister-at-law of at least three years' standing at the Bar of Ontario, and a resident in the county or district for which he is appointed. 9 Edw. VII. c. 55, s. 3.
- Security. **4.** Every Crown Attorney shall give security for the due performance of the duties of his office and for the due payment of all moneys received by him by virtue thereof, in such sum, and with so many sureties, and in such manner and form as the Lieutenant-Governor in Council directs. 9 Edw. VII. c. 55, s. 4.
- Oath of Office. **5.** Every Crown Attorney shall before he enters upon his duties take and subscribe before the Judge of the County or District Court of the county or district for which he is appointed the following oath:

"I swear that I will truly and faithfully, according to the best of my skill and ability, execute the duties, powers and trusts of Crown Attorney for the County (or District) of
without favour or affection to any party: So help me God."

9 Edw. VII. c. 55, s. 5.

6. No Crown Attorney shall, by himself or his partner in business, act or be directly or indirectly concerned as counsel or solicitor for any prisoner or person in respect to any charge against such prisoner or person of any offence against the laws of Ontario or punishable under the criminal law. Prohibition against acting for persons charged with offences.
9 Edw. VII. c. 55, s. 6.

7. The Crown Attorney shall aid in the local administration of justice, and perform the duties by this or any other Act of Canada or of Ontario assigned to Crown Attorneys. Duties generally.
9 Edw. VII. c. 55, s. 7.

8. Subject to the provisions of sections 10 and 11 every Crown Attorney shall Special duties.

- (a) receive and examine all informations, examinations, depositions, recognizances, inquisitions and papers connected with criminal charges or offences against the laws of Ontario which the Justices of the Peace and Coroners of the county or district are required to transmit to him, and, where necessary, cause such charges to be further investigated, and additional evidence to be collected, and sue out process to compel the attendance of witnesses and the production of papers, so that prosecutions at the sittings of the High Court Division, the Court of General Sessions of the Peace and the County or District Court Judge's Criminal Court, may not be unnecessarily delayed or fail through want of proof; To receive and examine informations, etc.
To secure attendance of witnesses.
- (b) institute and conduct on the part of the Crown prosecutions for crimes and misdemeanours at the Court of General Sessions of the Peace, and the County or District Court Judge's Criminal Court for the county or district in the same manner as the Law Officers of the Crown institute and conduct similar prosecutions at the sittings of the High Court Division, and with the like rights and privileges, except as to the right of entering a *nolle prosequi*, and attend to all criminal business at the Court of General Sessions of the Peace, and the County or District Court Judge's Criminal Court; To institute and conduct prosecutions at Sessions, etc.
- (c) watch over the conduct of the Court of General Sessions of the Peace of cases wherein it is questionable whether the conduct complained of is punishable by law or where the particular act or omission presents more of the features of a private injury than of a public offence; and, without unnecessarily interfering with private individuals who wish in such cases to prosecute, assume wholly the conduct of the case where To watch certain cases brought by private prosecutors.

justice towards the accused seems to demand his interposition;

To deliver papers connected with criminal business at Assizes to Crown Officer.

(d) deliver to the Crown Officer or Counsel appointed by the Attorney-General, all papers connected with the criminal business at the Sittings of the High Court Division on or before the opening of the Court;

When to take charge of business.

(e) be present at the Court, and, if required, assist the Crown Officer or Counsel with the criminal business, and, in the absence of the Law Officers of the Crown and of such Counsel, represent the Crown and take charge and conduct of the criminal business to be done at such sittings;

To institute and conduct summary proceedings before Justices of the Peace in certain cases.

(f) if required by the general regulations touching his office made in pursuance of the provisions hereinafter contained, on a complaint in writing, or where the public interests so require, institute and conduct proceedings before Justices of the Peace under any Act or law conferring summary powers to convict for offences in relation to the public revenue, the public property, the public domain, the public peace, the public health, and any other matter made punishable on summary conviction;

To advise Justices of the Peace at their request.

(g) advise a Justice of the Peace in respect to criminal offences brought before him for preliminary investigation or for adjudication if he requests him to do so by writing containing a statement of the particular case;

To supply forms for use of Justices of the Peace.

(h) procure the necessary forms for the use of Justices of the Peace, and supply the same to acting Justices of the Peace as needed, in such manner as he deems expedient, the expense of which shall be paid out of the county funds as part of the expenses connected with the administration of justice, except where such forms are supplied by the county council through the clerk of the county or the Clerk of the Peace;

Duties and fees of Crown Attorney on admitting person to bail.

(i) where a prisoner is in custody charged with an indictable offence, and an application is made for bail, enquire into the facts and circumstances upon which the charge is based, and satisfy himself as to the sufficiency of the surety or sureties offered, and examine and approve of all bail bonds entered into before a Justice of the Peace or Police Magistrate, in case bail is consented to or ordered, for which services he shall be entitled to receive from the person for whom bail is given, in each case, the sum of one dollar, and where the

prisoner is unable to make such payment the same may be paid in the same manner as other fees of the Crown Attorney;

- (j) perform such other duties and services as the Lieutenant-Governor in Council, by regulations prescribes and directs for carrying out the provisions of any Act imposing duties upon Crown Attorneys, and also touching the office of Crown Attorney and the prosecution of criminal offenders;

To perform duties to be assigned by regulations in Council.

- (k) advise coroners and attend coroners' inquests if requested by the coroner in writing so to do.

Assistance to coroner.

9 Edw. VII. c. 55, s. 8.

9. Where a person is committed for trial or bailed to answer a criminal charge the Justice of the Peace committing or bailing shall deliver or cause to be delivered without delay to the Crown Attorney the informations, depositions, examinations, recognizances and papers connected with the charge; and, subject to the provisions of section 8 of *The Ontario Summary Convictions Act*, the Crown Attorney shall be the "Proper officer of the Court by which the accused is to be tried," within the meaning of section 695 of *The Criminal Code*, and in every case of inquisition found before a Coroner, the inquisition and every recognizance taken before him, with the written information, if any, and the depositions and statements, if any, of the accused shall be forthwith delivered to the Crown Attorney of the county or district in which the inquisition has been found; and, where an information has been laid or complaint made before a Justice of the Peace, whether proceedings have been taken thereon or not, the Justice shall deliver to the Crown Attorney all papers connected therewith on being by him required so to do. 9 Edw. VII. c. 55, s. 9.

Justices to deliver informations, etc., to Crown Attorney.

Rev. Stat. c. 90.

R. S. C. 1906, c. 146, s. 695.

10. The Crown Attorney for the City of Toronto shall be the Crown Attorney whose duty it shall be to institute and conduct on the part of the Crown prosecutions before the Police Magistrate for the City of Toronto, and to institute and conduct all other proceedings before the Police Magistrate or any Justice or Justices of the Peace acting for such Police Magistrate under any Act or law conferring summary powers to convict for offences in relation to the public revenue, the public property, the public domain, the public peace, the public health and any other matter made punishable on summary conviction before such Police Magistrate or Justice or Justices of the Peace; and the Crown Attorney is hereby empowered to institute such proceedings upon a complaint in writing or as public prosecutor in cases where the public interest requires the exercise of such office. 9 Edw. VII. c. 55, s. 10.

Duties of Crown Attorney for the City of Toronto.

Duties of
Crown Attorney for County
of York.

11.—(1) The Crown Attorney for the County of York shall, with respect to all Police and Magistrates' Courts within the County of York, except those mentioned in the next preceding section, perform like duties and have like powers to those which are conferred by the next preceding section upon the Crown Attorney for the City of Toronto.

General duties.

(2) Except as otherwise by this Act expressly provided the Crown Attorney for the County of York shall also perform all the duties required to be performed by Crown Attorneys under this Act or any regulations made thereunder. 9 Edw. VII. c. 55, s. 11.

Lieutenant-Governor in Council may make regulations as to duties and fees of Crown Attorney.

12. The Lieutenant-Governor in Council may make regulations for carrying out the provisions of any Act imposing duties upon Crown Attorneys, and also touching the office of Crown Attorney, and for the prosecution of offenders against the laws of Ontario or against the criminal law, and may make a tariff of fees and charges to be payable to a Crown Attorney for services as such officer not otherwise provided for by this or any other Act. 9 Edw. VII. c. 55, s. 12.

Case of unavoidable absence or illness of Crown Attorney provided for.

13. In case of the illness or unavoidable absence of the Crown Attorney, the Judge of the County or District Court of the county or district may appoint a barrister-at-law to act for him during his illness or absence, and notice of the appointment and of the cause thereof shall be sent to the Provincial Secretary, and the Lieutenant-Governor in Council may at any time annul the appointment. 9 Edw. VII. c. 55, s. 13.

Sections 3 and 4 of c. 106 of the Consolidated Statutes of U. C. are as follows:

Fees in cases conducted by him at trial, where costs are paid by defendant.

3. In every case of misdemeanour tried at the Court of Quarter Sessions, in which costs are or may be ordered to be paid by a defendant, the County Attorney shall be entitled to fees as Attorney and Counsel for services rendered in such case, to be taxed by the Court according to the scale of allowance in the County Courts as nearly as the nature of such services will allow; such fees in case of conviction to form part of the costs payable by a defendant.

And in case of felony or misdemeanour when costs are not paid by defendant.

4. In all cases of felony tried as aforesaid, and in all cases of misdemeanour in which no costs have been ordered to be paid, or, if ordered to be paid, cannot be made of the defendant, the County Attorney shall be entitled to receive for the services rendered by him in each such case the sum of five dollars, to be paid upon certificate of the Chairman of the Court of Quarter Sessions, and to form a portion of the expenses of the administration of criminal justice in Upper Canada.

[See also sections 1044-1047 of *The Criminal Code of Canada*. R.S.C. 1906, c. 146.]

14. For services in the County or District Court Judge's Criminal Court the Crown Attorney shall be entitled to the same fees as for like services in the Court of General Sessions of the Peace. 9 Edw. VII. c. 55, s. 14.

Fees in County Court Judges' Criminal Court

15. Every Crown Attorney shall be allowed a percentage of \$4 on every \$100 of public moneys coming into his hands. 9 Edw. VII. c. 55, s. 15.

Percentage on money coming into his hands.

16.—(1) The Lieutenant-Governor in Council may commute the fees payable to a Crown Attorney in any county or district in which there is a city having a population of over 100,000 for a fixed annual sum, not exceeding the average income derived from fees during the next preceding five years.

Commutation of certain Crown Attorney's fees.

(2) Any annual sum fixed as provided in the next preceding subsection shall continue until varied by Order in Council, but any order for payment of any such annual sum may be rescinded, and the amount may, by order in Council, be increased or diminished provided that in no case shall any Order in Council name a sum exceeding the average income or fees aforesaid, as the case may be, during the next preceding five years.

Amount may be varied.

(3) The Lieutenant-Governor in Council may also direct that any money appropriated by the Legislature for assistance to the Crown Attorney shall be paid to the Crown Attorney in addition to the amount of such commutation. 9 Edw. VII. c. 55, s. 16.

Payment for assistance to Crown Attorney.

17. Every Crown Attorney and Clerk of the Peace shall, on or before the 15th day of January in every year, make to the Inspector of Legal Offices a return under oath of the aggregate amount of the fees and emoluments of his office during the next preceding year, up to and including the 31st day of December. 9 Edw. VII. c. 55, s. 17.

Return of fees.

[See also section 11 of *The General Sessions Act, R.S.O. c. 60.*]

CHAPTER 92.

An Act respecting Coroners and Coroners' Inquests.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Coroners Act*. 1 Geo. V. c. 23, s. 1.

Interpretation
"Coroner." **2.** In this Act "Coroner" shall include Associate Coroner. 1 Geo. V. c. 23, s. 2.

PART I.

APPOINTMENT OF CORONERS.

GENERALLY.

Appointment
of Coroners
generally. **3.**—(1) The Lieutenant-Governor in Council may appoint one or more Coroners for the whole or any part of every county, city, town, provisional judicial district and provisional county.

Exception. (2) This section shall not apply to the cities of Toronto or Hamilton. 3-4 Geo. V. c. 21, s. 1, *part*.

SPECIAL PROVISIONS AS TO THE CITIES OF TORONTO AND
HAMILTON.

Chief Coroners
for Toronto
and Hamilton. **4.**—(1) The Lieutenant-Governor in Council may appoint a Coroner to be called the Chief Coroner for the City of Toronto and a Coroner to be called the Chief Coroner for the City of Hamilton and such number of Associate Coroners in each city as may be deemed proper.

Associate
Coroners. (2) An Associate Coroner, subject to such regulations as the Lieutenant-Governor in Council may prescribe, shall perform all the duties and exercise all the powers of a Coroner.

Powers of
Coroners and
associates
appointed for
York and
Wentworth. (3) Except the Chief Coroner, every Coroner and Associate Coroner appointed for the County of York, including the City of Toronto, and for the County of Wentworth, including the City of Hamilton, shall have, exercise and perform within the City of Toronto and within the City of Hamilton respectively only such powers and duties as are assigned by the regulations to an Associate Coroner.

(4) The Chief Coroner for the City of Toronto shall be paid in lieu of all fees by the Corporation of the City half-yearly, such salary, not exceeding \$1,500 per annum, and the Chief Coroner of the City of Hamilton shall be paid in lieu of all fees by the Corporation of the City half-yearly such salary not exceeding \$1,000 per annum, as may be fixed by the Lieutenant-Governor in Council, and the said Corporations shall be respectively reimbursed out of The Consolidated Revenue Fund to the extent of one-half such respective salaries. 3-4 Geo. V. c. 21, s. 1, *part*.

NOTICE OF APPOINTMENT.

5. A copy of the Order in Council appointing a Coroner shall be sent to the Clerk of the Peace of the County or District in which the Coroner is to act, and shall be filed by him in his office. 1 Geo. V. c. 23, s. 5.

PART II.

INQUEST ON DEATH.

DISQUALIFICATION OF CORONER.

6. A Coroner shall not conduct an inquest upon the body of any person whose death has been caused at or on a railway, mine or other work, whereof he is the owner, or part owner, or which is owned or operated by a company in which he is a shareholder, or in respect of which he is employed as medical attendant or in any other capacity by the owner thereof, or under any agreement or understanding, direct or indirect, with the employees at or on such work. 1 Geo. V. c. 23, s. 6.

DUTY OF CORONER ON INFORMATION OF DEATH.

7.—(1) Where a Coroner is informed that there is within his jurisdiction the body of a deceased person, and that there is reason to believe that the deceased died from violence or by unfair means, or in consequence of culpable or negligent conduct of others, or under such circumstances as require investigation, he shall issue his warrant to take possession of the body, Form 1, and shall view the body and make such further enquiry as may be required to satisfy himself whether or not an inquest is necessary.

(2) After the issue of such warrant no other Coroner shall issue a warrant or interfere in the case, except under the instructions of the Attorney-General or the Crown Attorney. 1 Geo. V. c. 23, s. 7.

8. If, after making such enquiry, the Coroner deems it necessary that an inquest should be held, he shall issue his warrant, Form 2, for the holding of an inquest, and shall

forthwith transmit to the Crown Attorney a statutory declaration, Form 3, setting forth briefly the result of such enquiry, and the grounds upon which he deems it necessary that an inquest should be held. 1 Geo. V. c. 23, s. 8.

Warrant for burial where coroner deems inquest unnecessary.

9.—(1) If, after viewing the body and making such enquiry, the Coroner deems an inquest unnecessary, he shall issue his warrant, Form 4, to bury the body, and shall forthwith transmit to the Crown Attorney a statutory declaration, Form 5, setting forth briefly the result of such enquiry and the grounds on which the warrant has been issued.

Power of Crown to direct inquest.

(2) Notwithstanding such declaration, the Attorney-General or the Crown Attorney may direct the Coroner making the same, or some other Coroner having jurisdiction, to hold an inquest upon the body, and the Coroner to whom such direction is given shall forthwith issue his warrant for an inquest and hold the same accordingly. 1 Geo. V. c. 23, s. 9.

Fees of coroner when inquest not held.

10. If the Coroner declares an inquest to be unnecessary, and an inquest is not held by him, he shall be entitled for his services to a fee of \$5 and mileage at the rate of 20 cents per mile for every mile necessarily travelled by him, and such fee and mileage shall be paid in the same manner and upon the same conditions as the fees of a Coroner in a case in which an inquest is held. 1 Geo. V. c. 23, s. 10.

WHEN INQUEST COMPULSORY.

Accidents on railways and street railways operated on or over highways.

11. Where the death of any person appears to have been caused in the construction or operation of any railway, street railway or electric railway the Crown Attorney, subject to the provisions of section 6, shall direct a Coroner having jurisdiction in the locality to hold an inquest upon the body of the person so dying, and the Coroner shall issue his warrant and hold an inquest accordingly. 1 Geo. V. c. 23, s. 11.

Power of Coroner to take charge of wreckage.

12.—(1) Where a Coroner has ordered an inquest upon the body of a person who has met death by violence in the wreck of a building, bridge, structure, embankment or railway train, the Coroner may take charge of all wreckage and place a constable or constables in charge thereof so as to prevent persons from disturbing such wreckage until the jury at the inquest has viewed the same, or the Coroner where there is no jury has made such examination as he deems necessary.

Special constables.

(2) The Coroner shall have power to swear in such special constables as may be necessary for such purposes.

View by jury or Coroner.

(3) The jury or Coroner as the case may be shall view such wreckage at the earliest moment possible. 3-4 Geo. V. c. 18, s. 20 (2).

13.—(1) Where an inmate of a house of refuge or house of industry dies, the superintendent, or other officer in charge, shall immediately give notice of such death to the Crown Attorney. Death in house of refuge or house of industry.

(2) On receipt of such notice the Crown Attorney shall enquire into the facts, and if, as a result of such enquiry, he is of opinion that such death took place under circumstances requiring an investigation, he shall direct a Coroner having jurisdiction to hold an inquest upon the body of the deceased person, and the Coroner shall issue his warrant, Form 2, and hold an inquest accordingly. 1 Geo. V. c. 23, s. 12. Order of Crown Attorney for inquest.

14. Where a prisoner in a gaol, prison, house of correction, reformatory or lock-up dies the warden, gaoler, keeper or superintendent thereof shall immediately give notice of such death to a Coroner having jurisdiction in the county, city or town in which such death takes place, and the Coroner shall issue his warrant, Form 2, and hold an inquest upon the body. 1 Geo. V. c. 23, s. 13. Death of prisoner.

POWERS AND DUTIES OF CROWN ATTORNEY OR COUNSEL FOR ATTORNEY-GENERAL.

15.—(1) Every Coroner, before holding an inquest, shall notify the Crown Attorney of the time and place of holding the same, and the Crown Attorney may, and if directed by the Attorney-General shall, attend the inquest and may examine or cross-examine the witnesses thereat, and the Coroner shall summon such witnesses as the Crown Attorney directs. Notice to Crown Attorney.

(2) The Attorney-General may be represented by Counsel at any inquest, and such Counsel shall have the same powers as the Crown Attorney has under subsection 1. 1 Geo. V. c. 23, s. 14. Special Counsel for Attorney-General.

MEDICAL WITNESSES AND POST-MORTEM.

16.—(1) The Coroner may, at any time before the termination of the inquest, by his warrant, Form 6, direct a *post-mortem* examination to be made by a medical practitioner, with or without an analysis of the contents of the stomach and intestines. Ordering post mortem.

(2) A *post-mortem* examination shall not be made without the consent in writing of the Crown Attorney unless an inquest is actually held. When consent of Crown Attorney to post mortem required.

(3) Every medical practitioner making a *post-mortem* examination shall make a report thereon in writing upon a form approved by the Lieutenant-Governor in Council which shall be supplied by the Coroner. Report of post mortem.

Fees not to be paid unless report made.

(4) No fees shall be paid to a medical practitioner for a *post-mortem* examination unless such report is made and contains the particulars required by the form or satisfactorily accounts for their absence. 1 Geo. V. c. 23, s. 15.

Calling medical attendant of deceased.

Imp. 50-51 V. c. 71, s. 21 (1).

17.—(1) The Coroner may issue his warrant, Form 6, for the attendance before him or at the inquest of the legally qualified medical practitioner, if any, who attended the deceased at his death, or during his last illness, or of any other legally qualified medical practitioner in or near the place where the death occurred, but he shall not without the consent of the Crown Attorney order the attendance of more than one medical practitioner.

Fees of medical witness.

When *post mortem* is held.

(2) A legally qualified medical practitioner shall be entitled for each attendance in obedience to any such order to \$5 and mileage at the rate of twenty cents per mile for every mile necessarily travelled, and for a *post-mortem* examination without an analysis of the contents of the stomach or intestines he shall be entitled to a fee of \$15, and if with such analysis to an additional fee of \$25.

Proving mileage.

(3) The number of miles so travelled shall be proved by the statutory declaration of the medical practitioner. 1 Geo. V. c. 23, s. 16.

JURY.

Number of jurors to be summoned.

18.—(1) The number of jurymen to be summoned to serve on an inquest shall be not less than seven nor more than twelve.

And to find inquisition.

(2) An inquisition may be found by a majority being not less than seven in number of the jurors sworn. 1 Geo. V. c. 23, s. 17.

Inquest without jury in district.

19. Where an inquest is held in a Provisional Judicial District the Coroner may, with the consent of the Crown Attorney, hold the inquest without a jury. 1 Geo. V. c. 23, s. 18.

Qualification of jurors.

20. A person shall not be qualified to serve as a juror unless he is named in the voters' list of the municipality and marked therein as qualified to serve as a juror. 1 Geo. V. c. 23, s. 19.

Disqualification.

21. An officer, employee or inmate of a house of refuge, house of industry, hospital, asylum, or charitable institution, gaol, prison, house of correction, reformatory or lock-up, shall not be qualified to serve as a juror at an inquest upon the body of any person whose death occurred therein. 1 Geo. V. c. 23, s. 20.

22.—(1) Every juror serving at an inquest shall be entitled to \$1 for every day upon which such inquest is held and is continued for not more than four hours, and where the time occupied by an inquest on any day exceeds four hours \$1 in addition for each such day, and mileage at the rate of 10 cents per mile for each mile necessarily travelled from his place of residence to the place where the inquest is held. ^{Fees of jurors.}

(2) Subject to the provisions of section 24 the amount to be paid to jurors shall be certified by the Coroner, who shall make his order for payment thereof. ^{Order of coroner for payment.} 1 Geo. V. c. 23, s. 21.

PAYMENT OF EXPENSES.

23. The Coroner shall give to every person entitled to fees, mileage or other expenses in connection with an inquest an order on the treasurer of the county, or of the city or separated town in which an inquest is held, or in the case of an inquest in a Provisional Judicial District upon the treasurer of the District, for the payment thereof, and upon presentation of the order the treasurer shall pay the amount named therein. ^{Expenses of inquest.} 1 Geo. V. c. 23, s. 22.

EXPENSES OF INQUEST WHEN CAUSE OF DEATH TAKES PLACE OUTSIDE CITY OR TOWN.

24.—(1) Where an inquest is held upon the body of a person who has died in a county, city or separated town, and the jury find that the cause of death did not arise within such county, city or town, the Coroner shall make an order for the payment of the fees and expenses in connection with such inquest on the treasurer of the county, city or town in which the inquest is held, who shall thereupon pay the same; and the amount so paid shall, on demand, be repaid by the treasurer of the county, city or separated town in which the matter causing the death is found to have arisen or taken place. ^{Payment of expenses of certain inquests in city or separated town.}

(2) In this section "county" shall not include a city or a town separated from a county for municipal purposes. ^{Application of section.} 1 Geo. V. c. 23, s. 23.

ANNUAL RETURNS.

25.—(1) Every Coroner shall on or before the 15th day of January in each year make a return to the Attorney-General for the year ending on the 31st day of December next preceding, containing ^{Return to Attorney-General.}

(a) every case in which after investigation by him an inquest was deemed unnecessary, and

(b) every case in which an inquest was held by him, with the findings of the jury thereon.

Particulars in return.

(2) The return shall as far as possible show the name, place of residence and occupation of the deceased, the place of death, and the cause of death as found by the coroner on such investigation, or by the jury at the inquest.

Form of return.

(3) The return shall be in the form prescribed by the Lieutenant-Governor in Council which shall be furnished to all coroners. 1 Geo. V. c. 23, s. 24.

FEES OF CORONERS.

Coroner's fees.

26.—(1) The fees and expenses to be allowed and paid to a coroner holding an inquest upon a death shall be those set forth in schedule "A," and shall be payable, in the first instance, by the city or county, and the city or county shall be recouped for the same out of the Consolidated Revenue Fund. 1 Geo. V. c. 23, s. 25 (1).

Additional allowance to coroners in Provisional Judicial Districts.

(2) On the recommendation of the Attorney-General an additional allowance may be made to a Coroner holding an inquest, where in the opinion of the Attorney-General such fees are an insufficient remuneration, having regard to the difficulties of travelling and other special circumstances. 3-4 Geo. V. c. 18, s. 20 (1).

PART III.

INVESTIGATION OF FIRES.

ON REQUISITION OF INSURANCE COMPANY OR MUNICIPAL COUNCIL.

Material upon which coroner to act.

27. Where a Coroner within whose jurisdiction a fire has occurred, whereby any building, or any moveable property, has been wholly or in part consumed or damaged, receives

(a) a requisition in writing signed by the agent of an insurance company setting forth the facts as far as known, and stating that there is reason to believe that the fire was the result of culpable or negligent conduct or design, or occurred under such circumstances as, in the interests of justice and for the due protection of property, require investigation; and requiring the coroner to hold an inquiry into the cause and origin of the fire; together with a statutory declaration that the statements made in the requisition are true to the knowledge of the person making the declaration; or

(b) a resolution passed by the council of the city, town, village or township in which the fire took place,

that there are strong special and public reasons why an investigation should be held into the cause and origin of the fire and stating such reasons, and

- (c) an undertaking, on the part of the insurance company or council, to pay the expenses of the inquiry,

he may, in his discretion, issue his warrant for summoning not less than seven nor more than twelve of the householders resident in the vicinity of the fire to hear the evidence that may be adduced concerning the same, and to render a verdict under oath according to the facts, or he may hold the inquest without a jury. 1 Geo. V. c. 23, s. 26.

FEES OF CORONER.

28. Where an inquest is held by a Coroner in respect of a fire the Coroner shall be entitled to the sum of \$10, and should the enquiry extend beyond one day, then to \$10 *per diem* for each of two days thereafter and no more. 1 Geo. V. c. 23, s. 27.

PAYMENT OF EXPENSES.

29. The insurance company or municipal council requiring the inquest shall alone be responsible for the expenses of and attending the same, and the fees, mileage and other charges shall be certified by the Coroner, who shall give his order in writing upon the company or the treasurer of the municipality, as the case may be, for payment thereof to the persons entitled thereto, and the same shall be payable accordingly. 1 Geo. V. c. 23, s. 28.

30. The expenses consequent upon an adjournment of an inquest shall not be chargeable against or payable by the insurance company or municipal council requiring the investigation unless the Coroner has certified under his hand why and for what purpose in his opinion an adjournment took place or became necessary. 1 Geo. V. c. 23, s. 29.

WHO TO BE PARTIES TO INVESTIGATION.

31.—(1) A director or officer of any fire insurance company interested, or the assured, or any person claiming under a policy of insurance, or any person prejudicially affected by any of the evidence adduced may attend personally or by counsel any investigation held under this Part as party thereto, and may, with the Coroner's consent, examine, cross-examine or re-examine witnesses, as the case may be.

(2) The Coroner shall summon such witnesses as he may deem necessary and as may be required by any party to the investigation. 1 Geo. V. c. 23, s. 30.

DISQUALIFICATIONS.

Disqualifi-
cation of
coroner for
interest.

32. A Coroner who is a director or officer of the insurance company, or who is interested in any way, shall not hold an investigation under this Part, nor shall any such director or officer or any other interested person act for the Coroner as clerk, reporter or otherwise in taking down or recording the depositions or evidence. 1 Geo. V. c. 23, s. 31.

PART IV.

PROVINCIAL CORONERS.

Appointment
of provincial
coroners for
investigation
of certain
offences
against
property.

33.—(1) The Lieutenant-Governor in Council may appoint Provincial Coroners, each of whom shall be by virtue of his appointment a Coroner for every county, provisional county and provisional judicial district for the purpose of

- (a) holding fire inquest;
- (b) holding investigations in cases of maiming or suspected poisoning of horses, cattle and other domestic animals; and
- (c) holding an investigation in any case in which there is in his opinion reason to believe that property has been destroyed or damaged by the wilful or malicious use of explosives.

Powers

(2) Except where otherwise expressly provided a Provincial Coroner when holding an inquest or investigation shall have all the powers of a Coroner.

Fire
inquests by
provincial
coroner.

(3) Where a fire has occurred whereby any building or any moveable property has been wholly or in part consumed or damaged, and it appears to a Provincial Coroner that there is reason to believe that the fire was the result of culpable or negligent conduct or design, or occurred under such circumstances as require investigation, he may hold an inquest as to the cause or origin of the fire, and may summon a jury for that purpose, as provided by section 17, or may dispense with a jury as he may deem expedient.

Assent of
Attorney-
General or
Crown Attor-
ney required.

(4) A Provincial Coroner may hold an inquest or investigation without or upon the like requisition as in the case of a Coroner acting under Part III., but he shall not enter upon any inquest or investigation without the consent of the Attorney-General or the Crown Attorney.

Expenses of
investigation.

(5) Where a Provincial Coroner acts upon the requisition of an agent of an insurance company, or upon the resolution of a municipal council, the expenses of and incidental to the investigation shall be borne and paid in the same manner as in the case of an inquiry by a Coroner, and in other cases

such expenses shall be borne and paid in the same manner as in the case of an inquest upon the body of a deceased person. 1 Geo. V. c. 23, s. 32.

PART V.

GENERAL PROVISIONS.

APPLICATION.

34. This Part shall apply to every inquest and investigation held by a Coroner or by a Provincial Coroner under the authority of this Act or of any other Act or law in force in Ontario. 1 Geo. V. c. 23, s. 33.

Application of Part V.

35.—(1) In addition to any other powers which he may possess a Coroner shall have the same power to issue summonses to witnesses, Form 8, to enforce their attendance and to punish for non-attendance or refusing to give evidence as is possessed by the Supreme Court.

Powers of coroner.

(2) A fine imposed for non-attendance or refusal to give evidence shall not, in the case of a medical practitioner, exceed \$40, and in the case of any other witness shall not exceed \$10. 1 Geo. V. c. 23, s. 34.

Fine for non-attendance.

36.—(1) The evidence upon an inquest or any part of it, with the sanction of the Crown Attorney, may be taken in shorthand by a stenographer who may be appointed by the Coroner, and who before acting shall make oath that he will truly and faithfully report the evidence; and where evidence is so taken it shall not be necessary that it be read over to or signed by the witness, but it shall be sufficient if the transcript is signed by the Coroner and is accompanied by an affidavit of the stenographer that it is a true report of such evidence.

Taking evidence in shorthand

(2) The Coroner shall certify what he deems a reasonable allowance for the fees of the stenographer, and the same shall be paid, on the order of the Coroner, in the same manner as the other expenses of the witnesses.

Payment of fees of stenographer.

(3) The sanction of the Crown Attorney to the employment of a stenographer shall not be necessary in the case of an inquest held by a Provincial Coroner, or in the case of a fire inquest where one of the parties thereto in writing requests the Coroner to employ a stenographer and agrees to pay the extra charges occasioned thereby. 1 Geo. V. c. 23, s. 35.

When approval of Crown Attorney unnecessary.

37.—(1) A Coroner may and if required by the Crown Attorney shall employ a person to act as interpreter at an inquest, and such person may be summoned to attend the inquest.

Interpreter

Fees—How
payable.

(2) An interpreter shall be paid for his attendance and services such fees as may be fixed by the Provincial Coroner, or by the Coroner with the approval of the Crown Attorney. 1 Geo. V. c. 23, s. 36.

PENALTY ON JUROR FOR NON-ATTENDANCE.

Juror not
attending
—fine.

38. Where a person duly summoned to serve as a juror does not attend the Coroner may impose upon him a fine not exceeding \$4. 1 Geo. V. c. 23, s. 37.

RECOVERY OF FINES.

Estreating
fines.

39. Where a fine is imposed by a Coroner under this Act he shall thereupon make out and sign a certificate stating the name, residence and occupation of the delinquent, the amount of the fine imposed and the cause of the fine, and shall transmit such certificate to the Clerk of the Peace of the county in which the delinquent resides on or before the first day of the General Sessions of the Peace then next ensuing, and the fine so certified shall be estreated, levied and applied in like manner and upon and subject to the like powers, provisions and penalties as if it had been a fine imposed at the General Sessions. 1 Geo. V. c. 23, s. 38.

RETURN OF INQUISITION.

Return of
inquisition.

40. Every Coroner shall forthwith, after an inquisition found by or before him, return the same and every recognizance taken before him, with the evidence and exhibits, to the Crown Attorney. 1 Geo. V. c. 23, s. 39.

COURT ROOM FOR INQUEST.

Accommoda-
tion for
inquest.

41.—(1) The corporation of every city and town shall provide a suitable place for the holding of inquests, and until it is provided for that purpose, inquests may be held in the Police Court room of the municipality, but at such times as shall not interfere with the use of such court room for the holding of the Police Court.

Coroner may
procure room
in default of
council.

(2) If a suitable place is not provided by the corporation the Coroner may procure a suitable place for holding the inquest and the expense incurred shall be borne by the corporation. 1 Geo. V. c. 23, s. 40.

FORMS.

Forms.

42. The forms set out in Schedule B may be used for the purposes therein designated, but no inquisition shall be set aside or quashed on account of any deviation from any of such forms, where the instrument in question has been duly

signed and attested, and the effect thereof is the same as that set out in the form provided for the purpose. 1 Geo. V. c. 23, s. 41.

(For special provisions as to Coroners when acting under The Sheriffs Act, see cap. R.S.O. c. 16.)

(As to Fatal Accidents in Mines, see The Mining Act of Ontario, R.S.O. c. 32.)

SCHEDULE A.

(a) Impanelling a jury	\$2 00
(b) Examining each witness (including summons)	50
(c) Taking each recognizance	50
(d) Necessary travel per mile	20
When by railway, per mile	10
(e) Taking inquisition and making return	10 00
(f) Every warrant	1 00
(g) Order for the payment of jurors	1 00

1 Geo. V. c. 23, Sched. A.; 2 Geo. V. c. 17, s. 21.

SCHEDULE B.

FORM 1.

CORONER'S WARRANT TO TAKE POSSESSION OF BODY.

(Section 7.)

Province of Ontario	}	To the Chief Constable of the
of		of
To wit		in the County (or district)
		of

By virtue of my office these are in His Majesty's name to charge and command you that on sight hereof you forthwith take in charge the body of _____ deceased (or the body of an unknown person) now lying dead at (*describing as accurately as possible the locality in which body lies*).

And thereafter do and execute all such things as shall be given you in charge on behalf of our Sovereign Lord the King touching the death of _____ and for so doing this shall be your sufficient warrant.

Given under my hand and seal this _____ day
of _____, 19 _____

Coroner.

FORM 2.

WARRANT TO HOLD INQUEST ON DEATH.

(Sections 8, 12.)

Province of Ontario } To the Chief Constable of the
of } of
To wit } in the County (or district)
of

By virtue of my office these are in His Majesty's name to charge and command you that on sight hereof you summon and warn (not less than seven nor more than twelve) able and efficient men of your County (or City) personally to be and appear before me on day the day of , at o'clock in the noon of the same day at , called or known by the name or sign of , situate in the said then and there to do and execute all such things that shall be given them in charge on behalf of our Sovereign Lord the King touching the death of , and for so doing this shall be your sufficient warrant; and that you also attend at the time and place above mentioned, to make a return of the names of the persons whom you shall have so summoned and further to do and execute such other matters as shall be then and there enjoined you and have you then and there this warrant.

Given under my hand and seal this day of , 19 .

Coroner.

1 Geo. V. c. 23, Sched. B, Form 2.

FORM 3.

DECLARATION OF CORONER THAT INQUEST NECESSARY.

(Section 8.)

Province of Ontario } I, of the of in the
of } of a Coroner
To wit } in and for said , do
hereby solemnly declare:

That after viewing the body of (or the body of an unknown person) now lying dead at , in this , I am of opinion that there is good reason for believing that (or an unknown man, woman, or male or female child) now lying dead at did not come to his (or her) death from natural causes, or from mere accident or mischance; but came to his (or her) death from violence or unfair means, or culpable or negligent conduct of others, or under other circumstances requiring investigation by a Coroner's inquest.

And I make this solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath and by virtue of *The Canada Evidence Act*.

Declared before me at the }
of }
in the of }
this day of }
19 . } Coroner.

A Commissioner, etc.

1 Geo. V. c. 23, Sched. B, Form 3.

FORM 4.

WARRANT TO BURY AFTER A VIEW.

(Section 9.)

Province of Ontario	} of	To the person in charge or control of the burying grounds in the and to all others whom it may concern.
To wit		

Whereas, an inquisition hath this day been held upon view of the body of _____, who now lies dead in your (township or city or as the case may be). These are therefore to certify that you may lawfully permit the body of the said _____ to be buried: and for your so doing this is your warrant.

Given under my hand and seal this _____ day of _____, 19 ____.

Coroner.

1 Geo. V. c. 23, Sched. B, Form 4.

FORM 5.

DECLARATION OF CORONER UPON ORDER FOR BURIAL.

(Section 9.)

Province of Ontario	} of	In the matter of _____ deceased
To wit		

I, _____, Coroner of the _____, in the County of _____, do solemnly declare that I visited and examined the body of the said _____ and learned from _____ the following facts:—

Upon these facts I issued an order to bury the body.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of *The Canada Evidence Act*.

Declared before me at the _____	} of
in the _____ of _____	
this _____ day of _____, 19 ____	

A Commissioner, etc.

1 Geo. V. c. 23, Sched. B, Form 5.

FORM 6

WARRANT TO MEDICAL PRACTITIONER.

(Sections 16, 17.)

Province of Ontario of } To
 To wit } a legally qualified medical
 } practitioner of the of
 } in the of

By virtue of my office, these are in His Majesty's name to charge and command you that you do [make or assist in making a *post-mortem* examination of the body of of now lying dead at the of in the County of , with an analysis, and] appear before me and my jury at in the day of 19 , at o'clock, and give further evidence touching the death of

Given under my hand and seal this day of 19 .

Coroner.

The words between the brackets [] may be omitted when a *post-mortem* examination is not required.

1 Geo. V. c. 23, Sched. B, Form 6.

FORM 7.

SUMMONS TO A JUROR.

Province of Ontario of }
 To wit }

By virtue of a Warrant under the hand and seal of His Majesty's Coroner for this of of you are hereby summoned personally to be and appear before him as a jurymen on the day of at o'clock in the precisely, at the known by the name or sign of in the of then and there to enquire, on His Majesty's behalf, touching the death of and further to do and execute such other matters and things as shall be then and there enjoined you, and not depart without leave.

Herein fail not at your peril.

Dated the day of , 19

To of
 in the

Constable

1 Geo. V. c. 23, Sched. B, Form 7.

FORM 8

SUMMONS TO A WITNESS.

(Section 35.)

Province of Ontario } To of the of
 of } in the of
 To wit

Whereas I am credibly informed that you can give material evidence on behalf of our Sovereign Lord the King, touching the death of , now lying dead
in the of
in the said County of
These are, therefore, by virtue of my office, in His Majesty's name, to charge and command you personally to be and appear before me at *(here insert a sufficient description of the place where the inquest is to be held)* in the said at
of the clock in the noon, on the
day of (and then and there to give
evidence and be examined, on His Majesty's behalf, before me and
my inquest touching the premises.

Given under my hand and seal this
day of 19 .

Coroner.

1 Geo. V. c. 23, Sched. B, Form. 8.

CHAPTER 93.

An Act respecting Commissioners of Police appointed by the Government of Canada.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Dominion Commissioners of Police Act*. 10 Edw. VII. c. 38, s. 1.

Powers of
Dominion
Commissioners of
Police.
R.S.C. c. 92.

2. Every Commissioner of Police appointed under *The Dominion Police Act* to be and act as such within Ontario, and authorized in that behalf by the Lieutenant-Governor, shall have and may exercise within the territory named in his commission all the powers, authority, rights and privileges appertaining to a police magistrate and to justices of the peace generally; and in all respects, except as otherwise provided by this Act, shall be subject to the law respecting police magistrates and the office of justice of the peace. 10 Edw. VII. c. 38, s. 2.

Qualification
of Commis-
sioners.

3. It shall not be necessary for a Commissioner of Police to possess any property qualification or to be actually resident within the territorial division for which he is appointed, or to take or subscribe any oath of allegiance or of office. 10 Edw. VII. c. 38, s. 3.

Police con-
stables.

4. Every police constable appointed by a Commissioner of Police shall have all the powers, authority, rights and privileges and shall be charged with the duties and responsibilities appertaining to a constable appointed in Ontario, and shall be subject to the Commissioner of Police, and liable to all the responsibilities, forfeitures and penalties provided by *The Dominion Police Act*. 10 Edw. VII. c. 38, s. 4.

R.S.C. c. 92.

No authority in
municipal
matters.

5. No Commissioner of Police, and no such police constable shall, as such, have power or authority in respect of any purely municipal matter or offences against municipal by-laws. 10 Edw. VII. c. 38, s. 5.

Revocation of
commissions.

6. Where the Lieutenant-Governor revokes a commission issued by him under this Act, the authority of the commissioner, and of any constable appointed by him, as far as the same are given by this Act, shall forthwith cease. 10 Edw. VII. c. 38, s. 6.

CHAPTER 94.

An Act respecting Constables.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Constables Act*. 10 Edw. VII. c. 39, s. 1. Short title.

2. In this Act,

Interpretation.

(a) "County" shall include district;

"County"

(b) "County Court" shall include District Court. 10 Edw. VII. c. 39, s. 2. "County Court"

APPOINTMENT BY GENERAL SESSIONS.

3. The Court of General Sessions of the Peace, at any sittings or adjourned sittings but not at a special sittings, may appoint a sufficient number of fit and proper persons to be constables for the county, and may, in like manner, dismiss any constable so appointed. 10 Edw. VII. c. 39, s. 3. Appointment of Constables. Dismissal.

4. Every Constable so appointed, and having taken the oath, shall continue in office at least one year, and thereafter from year to year without re-appointment, unless he claims exemption from serving, in which case he shall be released at any time after the end of the first year. 10 Edw. VII. c. 39, s. 4. Continuance in office.

APPOINTMENT BY COUNTY JUDGE.

5.—(1) To prevent injurious delay in appointing County Constables, arising from the long intervals between the sittings of the Courts of General Sessions of the Peace, the Judge of the County Court may appoint one or more Constables for the County. Appointment of Constables by County Court Judges.

(2) The Judge shall forthwith notify the Clerk of the Peace of the appointment. Clerk of the Peace to be notified.

(3) The Clerk of the Peace shall report every such appointment to the Court of General Sessions of the Peace at the sittings holden next after he receives such notice, and, unless at such sittings the appointment is revoked, the same shall continue as if it had been made by such Court. Clerk to report to the General Sessions.

Authority of
Constables
appointed by
Judge.

(4) A Constable so appointed shall have the same authority and privileges and be subject to the same liability and shall perform the same duties as if appointed by a Court of General Sessions of the Peace. 10 Edw. VII. c. 39, s. 5.

APPOINTMENT BY POLICE MAGISTRATES.

Certain Police
Magistrates
may appoint
temporary
Constables.

6.—(1) A salaried County or District Police Magistrate may appoint a constable for the county or district of which he is a Police Magistrate to hold office for not more than thirty days.

Notice of
appointment.

(2) The Police Magistrate making any such appointment shall forthwith notify the Provincial Secretary thereof.

Revocation.

(3) The appointment may be revoked by the Police Magistrate, or by the Provincial Secretary, before the expiration of the thirty days.

Authority
and duties.

(4) A Constable appointed by a Police Magistrate shall have the same authority and privileges, and be subject to the same liability and perform the same duties as if appointed by a Court of General Sessions of the Peace. 10 Edw. VII. c. 39, s. 6.

Constables to
be sworn.

7. Every Constable shall before entering on the duties of his office take, subscribe and deposit with the Clerk of the Peace the following oath:

The Oath.

I, _____, having been appointed Constable for _____ do swear that I will truly, faithfully and impartially perform the duties appertaining to the said office, according to the best of my skill and ability: So help me God."

Sworn, etc.

A. B.

10 Edw. VII. c. 39, s. 7.

HIGH CONSTABLE.

Appointment
remuneration
and equip-
ment of High
Constable.

8.—(1) The municipal council of every county shall by by-law appoint a fit and proper person to be High Constable for the county, and may fix his remuneration by salary or otherwise, and may allow him such sums for expenses, and may supply him with such arms and accoutrements, clothing and other necessaries as may be deemed proper.

When council
neglects to
appoint.

(2) If the council does not within three months after a vacancy occurs fill the same, the appointment may be made by the Judge of the County Court, the Warden, the Sheriff and the Crown Attorney, or any three of them, and the person so appointed shall hold office until his appointment is confirmed, or a new appointment made by the council. 10 Edw. VII. c. 39, s. 8.

9.—(1) Every person appointed to be a High Constable shall before entering on the duties of his office, take and subscribe the following oath: Oath of High Constable.

I, _____, do swear that I will well and truly serve Our Sovereign Lord the King in the office of High Constable for the county (or united counties) of _____ without favour or affection, malice or ill-will; and that to the best of my power, I will cause the peace to be kept and preserved, and prevent all offences against the persons and properties of His Majesty's subjects; and that while I continue to hold the said office, I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law: So help me God. Form of.

Sworn, etc.

C. D.

(2) The oath, together with a copy of the by-law by which the High Constable was appointed, shall be by him deposited in the office of the Clerk of the Peace, who shall immediately notify the Inspector of Legal Offices of the appointment. Deposit with Clerk of Peace.
10 Edw. VII. c. 39, s. 9.

10. A High Constable shall hold office during the pleasure of the council. 10 Edw. VII. c. 39, s. 10. Tenure of office.

11. A High Constable shall have the supervision of all the constables in his county, and shall be charged with the special duties of preserving the peace, preventing crime, and apprehending offenders; and shall have generally all the powers and privileges, and be liable to all the duties and responsibilities which belong to Constables. 10 Edw. VII. c. 39, s. 11. To have supervision of other Constables.

12. A High Constable for services rendered by him shall be entitled to the fees allowed by law, unless the council otherwise provides for payment therefor. 10 Edw. VII. c. 39, s. 12. To be entitled to fees unless otherwise provided.

13. Every Constable appointed by the authority of this Act shall be a County Constable. 10 Edw. VII. c. 39, s. 13. Constable to be County Constable.

RETURNS BY CONSTABLES.

14.—(1) Every High Constable and every Constable, whether appointed under the authority of this Act or any other Act, shall make such returns respecting his duties and acts as the Inspector of Legal Offices requires. High and County Constables to make returns.

(2) This section shall not apply to a city or to a town having a Board of Commissioners of Police. 10 Edw. VII. c. 39, s. 14. Exception as to certain cities and towns.

INQUIRIES BY INSPECTORS.

15.—(1) The Inspector of Legal Offices shall have authority to inspect the offices of the High Constables and Constables to which section 13 applies, and may hold inquiries into their conduct in connection with their official duties. Supervision by Inspector of Legal Offices.

Inspector may examine on oath and compel attendance of witnesses.

(2) Where the Inspector institutes an inquiry he may require the officer or any other person to give evidence on oath; and for that purpose shall have the same power to summon such officer and other person to attend as witnesses, to enforce their attendance, and to compel them to produce books, documents and things and to give evidence, as any Court has in civil cases. 10 Edw. VII. c. 39, s. 15.

SUSPENSION AND DISMISSAL.

Suspension of Constables by County Court Judge or Inspector.

16.—(1) The Judge of the County Court or the Inspector of Legal Offices may suspend from office a High Constable or any County Constable for any period not extending beyond one week after the time appointed for the next sittings of the Court of General Sessions of the Peace.

Report to General Sessions.

(2) The suspension shall be by notice in writing and, if the Judge or the Inspector considers the suspended officer deserving of dismissal, he shall, immediately after suspending him, report the case fully to the Clerk of the Peace for submission to the Court of General Sessions of the Peace at its next sittings.

Power of Court.

(3) The Court may dismiss the officer or direct him to be restored to his office, after the period of his suspension has expired, or after such further period as may be deemed proper. 10 Edw. VII. c. 39, s. 16.

ONTARIO PROVINCIAL POLICE FORCE.

Orders in Council confirmed.

17.—(1) The Orders in Council heretofore made respecting the Ontario Provincial Police Force, its organization, equipment, control and regulation, and fixing the salaries and other allowances and expenses payable to the members of the Force are confirmed.

Ontario Provincial Police Force.

(2) There shall continue to be a force of police constables to be known as the Ontario Provincial Police Force.

Composition of Force.

(3) The force shall consist of a Superintendent, a Secretary and such Inspectors of Criminal Investigation, Divisional Inspectors and Constables as the Lieutenant-Governor may deem necessary and may from time to time appoint, and every member of such force shall have authority to act as a Constable throughout Ontario and shall be deemed to be a Provincial Constable, and all members of the force shall conform to such rules and regulations as may from time to time be prescribed by the Lieutenant-Governor in Council.

Remuneration and expenses.

(4) Notwithstanding anything in the Orders in Council, mentioned in subsection 1 or in this Act contained, the Lieutenant-Governor in Council may from time to time fix the salaries, allowances and expenses to be paid to the members of the force and may from time to time alter or cancel any Order in Council heretofore made or hereafter made relating

to the Ontario Provincial Police Force, and such salaries, allowances and expenses shall be payable out of such sum as may from time to time be appropriated by this Legislature for the expenses of the Ontario Provincial Police Force. 10 Edw. VII. c. 39, s. 17 (1-4).

(5) Where any member of the Ontario Provincial Police Force is engaged in a matter of extradition or other special investigation his travelling and other expenses shall be paid out of the moneys appropriated for the administration of justice. 2 Geo. V. c. 17, s. 22. Expenses in special cases.

(6) The Superintendent shall have control of the Force, and may hold an enquiry into the conduct of any member thereof and upon such enquiry shall have and may exercise the like powers and authority as are conferred on the Inspector of Legal Offices by section 15 with respect to High Constables. Superintendent.

(7) The Lieutenant-Governor where he deems proper may authorize any person not a member of the Force to exercise the powers of a Provincial Police Constable. 10 Edw. VII. c. 39, s. 17 (5-6). Granting powers of Provincial Police Constable to other persons.

18.—(1) The Superintendent of the Ontario Provincial Police Force shall be *ex-officio* a Police Magistrate, and shall have and may exercise and perform the powers and duties of a Police Magistrate, and may take informations and issue warrants or summonses in any city, town, county, provisional county or provisional judicial district, or other locality in Ontario, and may make the same returnable in the city, town, county, provisional county, provisional judicial district, or other locality in which the offence charged is alleged to have been committed. Superintendent to be ex-officio police magistrate.

(2) The jurisdiction conferred by subsection 1 may be exercised by the Superintendent notwithstanding that there is in the locality in which he acts a Police Magistrate, who, under *The Police Magistrate's Act*, or any other Statute, has jurisdiction exclusive or otherwise. Exercise of jurisdiction. Rev. Stat. c. 88.

(3) The Lieutenant-Governor in Council may make such regulations from time to time with respect to the Ontario Provincial Police Force as he may deem expedient. 1 Geo. V. c. 17, s. 25 (1)-(3). Regulations.

19. When the Crown Attorney of any county, by writing addressed to the Superintendent of the Ontario Provincial Police Force, requests the services of a member of the force the expenses of any member of the force furnished in compliance with such request shall be certified by the Superintendent and the amount so certified shall be paid by the Treasurer of the County to the Treasurer of Ontario. 1 Geo. V. c. 17, s. 26. When County to pay expenses of Ontario police.

PERSONS EXEMPT.

Members of militia corps exempt from service.

20. The officers, non-commissioned officers and men of every militia corps shall be exempt from serving as Constables except as Special Constables; and a certificate under the hand of the officer commanding the corps shall be sufficient evidence of the service in his corps of any officer, non-commissioned officer or man for the then current year, and of his exemption. 10 Edw. VII. c. 39, s. 18.

APPOINTMENT OF SPECIAL CONSTABLES.

Appointment of special constables in certain cases of apprehension of riot, etc.

Who may be appointed.

21. If it is made to appear to any two or more Justices of the Peace upon the oath of any credible witness, that any tumult, riot, or felony has taken place or is continuing or may be reasonably apprehended within the limits for which such Justices have authority to act, and the Justices are of the opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace and for the protection of the inhabitants and the security of property, such Justices may, by writing under their hands, appoint so many as they think fit of the householders or other persons, not legally exempt from serving in the office of Constable, residing within such limits, or in the neighbourhood thereof, to act as Special Constables for such time and in such manner as to such Justices may seem necessary. 10 Edw. VII. c. 39, s. 19.

Oath.

22. The Justices of the Peace who appoint Special Constables by virtue of this Act, or any one of them, or any other Justice of the Peace acting within the same limits, may administer to any person so appointed the following oath:

"I, A. B., do swear that I will well and truly serve our Sovereign Lord the King in the office of Special Constable for the of , without favour or affection, malice or ill-will; and that to the best of my power, I will cause the peace to be kept and preserved, and prevent all offences against the persons and properties of His Majesty's subjects; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law: So help me God."

10 Edw. VII. c. 39, s. 20.

Notice of appointment to be sent to Provincial Secretary.

23. Where it is deemed necessary to appoint Special Constables notice of the appointment, and of the circumstances which rendered it expedient, shall be forthwith transmitted by the Justices making the appointment to the Provincial Secretary. 10 Edw. VII. c. 39, s. 21.

Justices may make regulations touching special constables.

24. The Justices who appoint any Special Constable, under this Act, or any two of them, or the Justices acting within the limits for which the Special Constable has been appointed, or the majority of them, may make such orders

and regulations as they may deem necessary or expedient for rendering the Special Constables more efficient for the preservation of the public peace, and may remove any such Special Constable from his office for any misconduct or neglect of duty therein. 10 Edw. VII. c. 39, s. 22.

25. Every Special Constable appointed under this Act, not only within the territorial division or place for which he has been appointed, but also throughout the entire jurisdiction of the Justices who appointed him, shall have and may exercise the like powers, authorities, advantages and immunities, and be liable to the like duties and responsibilities as any other constable. 10 Edw. VII. c. 39, s. 23.

Powers of special constables, and local extent of such powers.

26. Where a Special Constable, appointed under this Act, is serving within a territorial division or place, and two or more Justices of the Peace of an adjoining territorial division or place make it appear, to the satisfaction of two or more Justices of the Peace acting within the limits for which the Special Constable is serving, that extraordinary circumstances exist which render it expedient that the Special Constable should act in such adjoining territorial division or place, the last mentioned Justices may order such Special Constable to act in such adjoining territorial division or place in such manner as to the last mentioned Justices may seem proper, and notice of such order shall forthwith be transmitted by the Justices to the Provincial Secretary. 10 Edw. VII. c. 39, s. 24.

Constables may act in an adjoining division in certain cases.

27. Every such Special Constable, during the time he so acts in such adjoining territorial division or place, shall have and may exercise all the like powers, authorities, advantages and immunities, and be liable to the like duties and responsibilities as if he were acting within the territorial division or place for which he was originally appointed. 10 Edw. VII. c. 39, s. 25.

Their powers in such adjoining division.

28.—(1) The Justices of the Peace acting within the limits for which the Special Constable has been appointed or a majority of them may order such reasonable allowances for his trouble, loss of time and expenses, not exceeding \$1 a day, to be paid to such Special Constable who has so served or is then serving, as to such Justices, or to the majority of them may seem proper.

Special constables may be paid a per diem allowance.

(2) Such order shall be made upon the treasurer of the territorial or municipal division for which the Special Constable has been appointed, and the treasurer shall pay the same, and shall be allowed the same in his accounts. 10 Edw. VII. c. 39, s. 26.

Allowance to be paid by the Treasurer of the municipality.

29. The Justices who have appointed a Special Constable, or the Justices acting within the limits for which the Special Constable has been appointed, or a majority of them, may suspend or terminate the service of the Special Constable.

Justices may suspend or terminate the services of special constables.

Constable so appointed, and notice of such suspension or termination shall be forthwith transmitted by the Justices to the Provincial Secretary. 10 Edw. VII. c. 39, s. 27.

PENALTIES.

Special constables to deliver up their staves, etc., when discharged.

30. Every Special Constable, within one week after the expiration of his term of office, or after he has ceased to hold or exercise the same pursuant to this Act, shall deliver to his successor, if any, or to such persons and at such time and place as may be directed by a Justice of the Peace acting within the limits for which the Special Constable was appointed, every staff, weapon and other article which has been provided for such Special Constable under this Act; and if a Special Constable neglects or refuses so to do, he shall incur a penalty not exceeding \$8. 10 Edw. VII. c. 39, s. 28.

Penalty for refusing to take oath or act as constable.

31. If a person appointed to be a Special Constable

(a) refuses to take the oath hereinbefore mentioned when thereunto required by the Justices of the Peace who appointed him or by any two of them or by any other two Justices of the Peace acting within the limits for which he was appointed;
or

(b) neglects or refuses to appear for the purpose of taking the oath at the time and place for which he has been summoned unless he proves that he was prevented from so doing by sickness or some unavoidable cause; or

(c) being called upon to serve, neglects or refuses to serve or to obey such lawful orders or directions as may be given to him for the performance of the duties of his office,

he shall incur a penalty not exceeding \$20. 10 Edw. VII. c. 39, s. 29.

Recovery of penalties. Rev. Stat. c. 90.

32. The penalties imposed by or under the authority of this Act shall be recoverable under *The Ontario Summary Convictions Act* and shall be paid to the treasurer of the territorial or municipal division within which the offence was committed. 10 Edw. VII. c. 39, s. 30.

CHAPTER 95.

An Act to authorize Police Constables to take Bail.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Police Constables Bail Act*. 10 Edw. VII. c. 40, s. 1. Short title.

2.—(1) Where a person charged with an offence against any statute of Ontario, or against any by-law passed under the authority of any such statute, is taken into custody either with or without the warrant of a justice of the peace and is brought into a police station in a city or town at any time during the day or night the police officer in charge of the station, if he thinks the case a proper one, may take bail without fee from such person, by recognizance conditioned for his appearance within two days before the Police Magistrate or other Justice in the city or town at the time and place therein mentioned. When officers in charge of police station may take bail.

(2) The recognizance shall be of equal obligation on the persons entering into the same, and the same proceedings may be taken for the estreating thereof as if it had been taken before a Justice of the Peace. 10 Edw. VII. c. 40, s. 2. Effect of recognizance so taken.

3. The police officer shall enter in a book the name, residence and occupation of the person entering into the recognizance, and of his surety or sureties, if any, with the condition of the recognizance and the sums acknowledged; and a proper book shall be kept in every city or town police station for the purpose of making such entries. 10 Edw. VII. c. 40, s. 3. Record of recognizance.

4. The police officer shall make a return of all recognizances taken by him to the Police Magistrate, or other Justice present, at the time when, and place where, the person charged is required to appear. 10 Edw. VII. c. 40, s. 4. When return of recognizance to be made.

5. If the person charged does not appear at the time and place required, or during the time such Police Magistrate or other justice is sitting, the Police Magistrate or justice shall, within forty-eight hours after such failure to appear, cause a record of the recognizance to be drawn up and signed Record of recognizance when accused fails to appear

by the police officer, and shall return the same to the Court of General Sessions of the Peace for the county or district in which the city or town is situate, at its next sittings, with a certificate signed by the Police Magistrate or justice stating that the person charged has not complied with the obligation contained in the recognizance. 10 Edw. VII. c. 40, s. 5.

Record of
estreat.

Rev. Stat. c. 98.

6. The Clerk of the Peace shall make the like record of estreat of every such recognizance as in the case of other recognizances forfeited at the Court of General Sessions of the Peace and the provisions of *The Estreats Act* shall apply to such recognizance. 10 Edw. VII. c. 40, s. 6.

Enlarging
recognizance.

7. If the person charged applies in person or by any person on his behalf to postpone the hearing of the charge against him the Police Magistrate or Justice may from time to time enlarge the recognizance to such further time as he may appoint; and, unless the sureties, if any, appear and object, they shall continue bound until the final determination of the charge before such Police Magistrate or Justice. 10 Edw. VII. c. 40, s. 7.

Recognizance
to be dis-
charged with-
out fee.

8. When the matter is heard and determined, either by the dismissal of the charge or by binding over the person charged to answer the matter of the complaint at the Court of General Sessions of the Peace or otherwise, the recognizance shall be discharged without fee. 10 Edw. VII. c. 40, s. 8.

3. *Expenses.*

CHAPTER 96.

An Act respecting the Expenses of the Administration of Justice.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Administration of Justice Expenses Act*. 10 Edw. VII. c. 41, s. 1.

PART I.

FEES OF OFFICERS.

2. Where not otherwise provided by law the Judges ^{Who may make Rules as to fees.} authorized to make Rules under *The Judicature Act* may make Rules fixing and determining the fees to be allowed to Counsel, Solicitors and other officers and persons for or in respect of any criminal prosecutions, matters, and proceedings in the High Court Division or Court of General Sessions of the Peace, or under any Commission or Special Commission, or relating to the King's Revenue, and shall therein distinguish the fees to be paid by private individuals. 10 Edw. VII. c. 41, s. 2.

3. Subject to such Rules the table of fees in Schedule A <sup>Fees in criminal matters—
to Sheriffs,
Crown
Attorneys,
Coroners,
Clerks of the
Peace, etc.</sup> shall be the fees to be taken by sheriffs, coroners, clerks of the peace, crown attorneys, clerks of courts, constables and criers respectively for the services therein mentioned, in respect of any business transacted by them in any such prosecution, matter or proceeding, and in the proceedings in the County or District Court Judge's Criminal Court and before coroners, police magistrates and justices of the peace. 10 Edw. VII. c. 41, s. 3.

4. A county council may agree with the clerk of the peace for the payment to him of a gross annual sum in lieu of all fees chargeable by him to the county, and which are ^{Arrangement with Clerk of the Peace as to his fees.} not repayable to the county by Ontario; but either of the parties to the agreement may determine the same on the 31st day of December in any year, by giving to the other

one month's notice, in writing, of the intention so to do, 10 Edw. VII. c. 41, s. 4.

Fees to constable.

5.—(1) Every constable attending the Assizes or Sessions shall be allowed for each day's attendance the sum of \$2, one quarter of which shall be payable out of the county funds.

Alteration by Order in Council.

(2) The Lieutenant-Governor in Council may alter the fees to be taken by constables. 10 Edw. VII. c. 41, s. 5.

Levying fees.

6. All percentages, fees or allowances, on levying fines and recognizances, may be levied over and above the amount of the fines and recognizances. 10 Edw. VII. c. 41, s. 6.

Fees for services not mentioned herein.

7. Nothing herein shall deprive any of the officers mentioned in section 3 of fees allowed by any Act of the Parliament of Canada, or of this Legislature, for other services not herein provided for. 10 Edw. VII. c. 41, s. 7.

Penalty for taking higher fees.

8. If any such officer wilfully demands or receives any other or greater fee, percentage, or allowance than the fee, percentage, or allowance to which he is entitled under this Act, for any of the services performed by him, unless allowed by an Act of the Parliament of Canada, or of this Legislature, or by the Lieutenant-Governor in Council, under section 5, he shall, for every such offence, incur a penalty of \$60, recoverable under *The Ontario Summary Convictions Act*. 10 Edw. VII. c. 41, s. 8.

Rev. Stat. c. 90.

Fees of Gaol Surgeons.

9. A gaol surgeon for the examination of each prisoner eligible for removal, or sentenced to a reformatory, including certificate, shall be entitled to receive a fee of \$1. 10 Edw. VII. c. 41, s. 9.

Certain items to apply to certain counties.

10. Items numbered 14, 16, 35, 41 and 42, as to sheriff's fees in Schedule A, shall apply in any year to any county in which the net income of the sheriff for the next preceding year did not exceed \$2,000, and not otherwise, and items numbered 16, 32, 33, 43, 44 and 45 shall not apply to the County of York or to the City of Toronto. 10 Edw. VII. c. 41, s. 10; 1 Geo. V. c. 17, s. 35 (1).

Allowance to constables and others for special services.

11.—(1) Where, in the opinion of the warden and crown attorney, special services, not covered by the ordinary tariff, are necessary for the detection of crime or the capture of a person who is believed to have committed a crime of a serious character they may authorize and direct any constable or other person to perform such service, and shall certify upon the account to be rendered by the constable or other person what they deem a reasonable allowance to be paid to the person employed, and the amount so certified shall be allowed to such person in the accounts in respect of the administration of justice, and shall be paid in the first instance by the county.

(2) The warden and crown attorney may direct the treasurer of the county to advance to the constable or other person such sum as they may name for the purpose of paying the reasonable and necessary expenses incurred or to be incurred by such constable or other person in the performance of such special services; and the treasurer of the county shall pay such sum, upon the written order of the warden and crown attorney, and shall deduct the amount thereof from the subsequently certified account of the constable or other person employed.

(3) This section shall not apply to services in a city or separated town for which there is a staff of salaried police officers, and no allowance shall in any other case be made under subsection 1 to any salaried constable or other officer, unless he is entitled to receive for his own use, in addition to his salary, the fees earned by him.

(4) This section shall apply *mutatis mutandis* to districts without county organizations, the "sheriff" being substituted for the "warden"; and the treasurer of the district shall pay or advance the amount certified or directed by the crown attorney and the sheriff in the same manner as the treasurer of the county is required to do by subsections 1 and 2. 10 Edw. VII. c. 41, s. 11.

12. In case of emergency the reeve of the municipality, in which crime of a serious character is supposed to have been committed may, jointly with the crown attorney, direct the payment in advance by the county treasurer to any high or county constable of a sum not exceeding ten dollars, in respect of any special services deemed by them to be necessary for the detection of the crime or the capture of a person who is supposed to have committed it; and they shall certify on the account to be rendered by the constable what they may deem to be a reasonable allowance for the services, and the treasurer shall, on their written order pay the sum so directed to be advanced as in other cases in the administration of justice. 10 Edw. VII. c. 41, s. 12.

13. Where a sittings of the High Court Division, County or District Court, or Court of General Sessions of the Peace is continued after eight o'clock in the evening an additional allowance, not exceeding one day's pay, may, upon the certificate of the presiding Judge, be made to any officer in attendance upon such Court who is paid for services by a *per diem* allowance. 10 Edw. VII. c. 41, s. 13.

[As to return of fees by Clerks of the Peace, see *The Crown Attorneys Act, R.S.O. c. 91.*]

14. Where special services are rendered by a legally qualified medical practitioner, by an Ontario land surveyor or by any other person in connection with a criminal trial or

Advances to constables, etc., for expenses in performing special services.

Application of this section.

In districts.

Advance to constable in case of emergency.

Allowance in case of prolonged sittings.

Payment for special services in criminal matters.

proceeding, and such services are rendered by the direction or with the approval of the Attorney General, the person by whom they are rendered shall be entitled to be paid such sum as the Attorney General may direct, and the same shall be charged upon and paid out of the Consolidated Revenue Fund. 3-4 Geo. V. c. 18, s. 21 (2).

Remuneration
of witnesses
coming to
Ontario to
give evidence.

15. Where it is, in the opinion of the Attorney General, necessary in order to procure the attendance, as a witness for the Crown at a criminal trial, of a person resident out of Ontario that such person should be compensated for his loss of time and expenses in attending the trial, the Attorney General may direct that such sum as he may deem reasonable be paid to such person and the same shall be charged upon and payable out of the Consolidated Revenue Fund. 3-4 Geo. V. c. 18, s. 21 (4).

PART II.

Fees payable
by Counties,
except fees for
services for
private benefit
of individuals.

16.—(1) All fees payable under Part I. to the officers therein mentioned, for services in proceedings in the nature of a civil remedy, for persons at whose instance and for whose private benefit the same are performed, shall be paid by such persons; and, except as herein or by law otherwise provided, all other fees payable to such officers for services connected with the administration of justice or county purposes shall be paid, in the first instance, by the county; and the counties paying the fees shall be entitled to be reimbursed out of the Consolidated Revenue Fund the amount of such of the fees as are payable out of that Fund under the provisions of Part IV.

Reimburse-
ment.

Special
allowances.

(2) Where an allowance to a constable or other person, under section 11, is paid by the county, one-half thereof shall be repaid to the county by the Province. 10 Edw. VII. c. 41, s. 14.

Re-imburse-
ment of county
for certain fees
of crown
attorney.

(3) Notwithstanding anything in this or in any other Act each county shall be entitled to be reimbursed from time to time out of the moneys appropriated to the Administration of Justice for Counties, such amounts paid to crown attorneys for services and disbursements in attending inquests and preliminary hearings in indictable offences as the Attorney-General shall in his discretion consider proper to be repaid. 2 Geo. V. c. 17, s. 23 (2); 3-4 Geo. V. c. 18, s. 21 (3).

Evidence of
payment by
county.

(4) A statutory declaration of the treasurer of the county that the accounts have been paid by the county shall be sufficient evidence of that fact. 3-4 Geo. V. c. 18, s. 21 (1).

Fees of
Sheriffs
on removals to
reformatories

17.—(1) The tariff of fees established by this Act for the services of sheriffs in connection with offenders sentenced or liable to be removed to the Ontario Reformatory shall

apply also to offenders sentenced or liable to be removed to other reformatories.

(2) The fees shall, in the first instance, be paid by the county, unless the gaol is owned and maintained by a city, in which case the fees, in respect of prisoners convicted for offences committed within the city limits, shall be paid in the first instance by the city, and, so far as they relate to prisoners convicted for offences committed in the county without the limits of the city, shall be paid in the first instance by the county. How payable.

(3) The county or city shall be repaid out of the Consolidated Revenue Fund such part thereof as relates to prisoners convicted of indictable offences at the sittings of the High Court Division, Court of General Sessions of the Peace, or County or District Court Judge's Criminal Court, or by police magistrates, under Part XV. of *The Criminal Code*. Repayment of county or city. 10 Edw. VII. c. 41, s. 15. R.S.C. c. 146.

18. Where a person is prosecuted or tried for an indictable offence and convicted or acquitted, or otherwise discharged, the costs of the prosecution, when not otherwise provided by law, shall be paid by the county. 10 Edw. VII. c. 41, s. 16. In cases of indictable offences costs to be paid out of the county funds.

19. Where a person is charged with an indictable offence every officer of the Court before which he is tried, or any proceeding is had with regard to the charge, who renders any official service in the matter of the charge, or in the course of the trial, to the person so charged, shall be paid his lawful fee for such service by the county, in the same manner as other fees payable to them in respect of official services rendered to the Crown in the conduct of public prosecutions, and no such fee shall in any case be demanded of or be payable by the person charged. 10 Edw. VII. c. 41, s. 17. In cases of indictable offences fees for services to person charged to be paid from the county funds.

20.—(1) Subject to the provisions of Part III., all accounts and demands preferred against a county in respect of the administration of criminal justice shall be audited and approved by the Board of Audit hereinafter mentioned. Accounts against county to be audited by a Board of Audit.

(2) The accounts and demands shall be delivered to the clerk of the peace on or before the first days of January, April, July and October in every year. 10 Edw. VII. c. 41, s. 18. Accounts to be sent to Clerk of Peace quarterly.

21.—(1) The board of audit shall consist of the Judge of the County Court, and two other persons, not more than one of whom shall be a member of the council, who shall be appointed annually at its first meeting by the council of the county. Board, how constituted and paid.

(2) Where a city forms part of a county for judicial purposes and pays a part of the expenses of the adminis- Where city concerned.

tration of justice the city council shall appoint one member of the board of audit, the other auditor being appointed by the county council.

Payment of
members.

(3) The county and city council may pay each member of the board a sum not exceeding \$4 a day for his attendance at the audit and five cents for each mile necessarily travelled in going to and returning therefrom.

Absence of
Judge.

(4) The Junior Judge in the absence or at the request of the Judge may act in his stead. 10 Edw. VII. c. 41, s. 19.

Duties of
Clerk of the
Peace at audit.

22. The clerk of the peace, on the direction of the Judge, shall convene the board for the purpose of submitting to it the accounts and demands delivered to him and shall attend the audit, record the proceedings thereat and carry out the orders of the board in respect of the same. 10 Edw. VII. c. 41, s. 20.

When board
to consider
accounts.

23.—(1) The accounts and demands shall be taken into consideration by the board between the first and fifteenth days of January, April, July and October in each year, and shall be disposed of as soon as practicable.

Report.

(2) The board, on the completion of the audit, to be made in October, shall make a report to the council of any irregularity in the accounts and demands, or of any claim made contrary to law, or of any other matter which the board considers should be brought to the notice of the council. 10 Edw. VII. c. 41, s. 21.

Authority of
Chairman of
Board of
Audit as to
evidence.

(3) The chairman of the Board of Audit shall have the power of summoning before the board any person, and of requiring him to give evidence on oath, and to produce such documents and things as the board may deem requisite to the full investigation of such accounts and demands, and for that purpose shall have the same power to enforce the attendance of any person, and to compel him to give evidence, and produce documents and things as is vested in any court in civil cases. 1 Geo. V. c. 17, s. 35 (2).

Discretion of
Board in case
of arrest of
vagrants.

24. Where the account of a constable for services performed in connection with the arrest and detention of vagrants is deemed unreasonable, or the arrests appear to have been unnecessary or to have been made for the purpose of making fees, the board may refuse to certify the accounts, in whole or in part, or may certify the facts and its opinion thereon to the county council, which may, by resolution, refuse payment of such accounts in whole or in part. 10 Edw. VII. c. 41, s. 22.

Orders given
to specify Act
authorizing
payment.

25. In certifying accounts, except for the payment of constables, the board shall name the Statute, if any, under which the expenditure is authorized. 10 Edw. VII. c. 41, s. 23.

26. The treasurer of the county shall notify the board of the items disallowed by the Treasurer of Ontario in the criminal justice accounts of the previous quarter, and the board may deduct the amounts so disallowed from the next or any accounts of the same officers submitted for audit. 10 Edw. VII. c. 41, s. 24.

Items dis-
allowed by
the Provincial
Treasurer.

27. On the presentation of his account for services and disbursements duly verified, with the certificate of the magistrate, Schedule B, and a recommendation of the Judge of the County Court, naming the amount, a high or county constable shall be entitled to be paid seventy-five per cent. of such account without waiting for a meeting of the board to pass the same; but if the board afterwards finds that the constable has been overpaid, he shall refund the amount overpaid, and if not refunded it may be deducted from his next or any subsequent account. 10 Edw. VII. c. 41, s. 25.

Payment of
percentage on
constable's
account on
recommendation
of County
Judge.

28. In proper cases the board may, upon the recommendation in writing of the magistrate and high constable, allow a reasonable amount to a county constable for his services, in addition to the fees provided for by Schedule A. 10 Edw. VII. c. 41, s. 26.

Board of
Audit may
allow sum in
addition to
tariff fees.

29. The board may direct the treasurer to defer payment of any account, or any item in any account, payable out of the Consolidated Revenue Fund in respect of which it doubts either the liability of the Province or the correctness of the amount charged, until the decision of the Treasurer of Ontario as to the correctness or allowance of the account or item has been notified to the treasurer. 10 Edw. VII. c. 41, s. 27.

Doubtful
items in ac-
counts may be
deferred.

30. The treasurer of every county shall, without further authority, pay the amount of the fees which are payable by the county, when certified by the board, and in preference to all other charges, unless otherwise provided by law and in the following order that is to say, after the expenses of levying and collecting and managing the rates and taxes imposed in the county are paid:

County Treas-
urer's duty.

- (a) All sums payable to the sheriff, coroner, gaoler, surgeon of the county gaol, or to any other officer or person, for the support, care or safe keeping of the prisoners in the county gaol, or for the repairing and maintaining of the court house or gaol;
- (b) The accounts of public officers and officers of the Court of General Sessions of the Peace;
- (c) All sums payable for any other purpose connected with the administration of justice within the county;

Order of pay-
ment for
accounts.

- (d) All other sums certified by the board in the order in which the same were certified. 10 Edw. VII. c. 41, s. 28.

PART III.

Auditors of accounts payable by Province.

31. The Lieutenant-Governor in Council may appoint the local registrar or deputy clerk of the Crown of the county, or some other public officer resident in the county town, to be the auditor of the accounts relating to the administration of justice in the county for which the Province is liable. 10 Edw. VII. c. 41, s. 29.

Audit of certain items by county auditor dispensed with.

32. Where such an appointment is made it shall not be requisite for the board of audit, appointed under Part II., to audit or approve any account in respect of items set out in Schedule A under any of the following headings namely:—“Sheriffs,” “Clerks of the Peace,” “Criers,” and “Constables” where the accounts rendered under these headings are in respect of offences belonging to any of the following classes:

(a) Offences for which the persons charged were committed or held to bail for trial at the sittings of the High Court Division or General Sessions of the Peace;

(b) Offences for which the persons charged were convicted before a police magistrate, under Part XV of *The Criminal Code*;

R.S.C. c. 146.

or in respect of fees to gaol surgeon under the heading “Other Matters” in such schedule. 10 Edw. VII. c. 41, s. 30.

Audit by County Auditors.

33. All other accounts in connection with the administration of civil or criminal justice which, under Parts I and II. or otherwise, are payable by the county shall be audited by the board of audit. 10 Edw. VII. c. 41, s. 31.

Accounts which are to be audited by auditor appointed under s. 29.

34. Where such an appointment is made, all services heretofore performed under the regulations provided for by Part IV, in respect of the auditing and approving of accounts relating to the administration of justice, and in respect of the auditing of accounts of the crown attorney, for which the Province is liable, shall thereafter be performed by the auditor so appointed who, so far as the auditing and approving of such accounts is concerned, shall be substituted for the board of audit, wherever the board is mentioned in Part II. 10 Edw. VII. c. 41, s. 32.

When accounts to be delivered to auditor.

35. All accounts and demands to be audited by the auditor shall be delivered to him in duplicate, on or before the tenth day of every month, and shall include all demands of

the person rendering the same up to the last day of the next preceding month. 10 Edw. VII. c. 41, s. 33.

36. Every account shall be rendered in the form in Form of account. Schedule B or in such other form as the Lieutenant-Governor in Council may prescribe, and shall be verified by the oath of the claimant that the account is correct in every particular, and, when mileage is charged, the places from and to which the mileage is reckoned, and the number of miles shall be mentioned; and in no case shall more than the actual number of miles travelled be allowed, nor, where the service is by a sheriff's officer, shall a greater number of miles be allowed than the distance from the court house to the place of service; and the separate items in such account shall be numbered consecutively. 10 Edw. VII. c. 41, s. 34.

37. Forms of account, in accordance with Schedule B, Forms to be provided by county. or such other form as may be prescribed by the Lieutenant-Governor in Council, shall be provided by the county, and shall on application be furnished by the county treasurer to the officers requiring them. 10 Edw. VII. c. 41, s. 35.

38. Every account of a constable shall be certified by the Constable's accounts to be certified. justice or coroner under whose direction the constable acted. 10 Edw. VII. c. 41, s. 36.

39. The auditor may call upon the claimant for any Powers of auditor. information that may be required in connection with his account, and for a reference to the authority for the charges made, and may administer an oath to the claimant or to any other person giving evidence in respect of the claim, but shall make no charge therefor. 10 Edw. VII. c. 41, s. 37.

40. The auditor shall audit each account on receipt thereof, Duties of auditor. or as soon thereafter as he reasonably can, and, if the claimant so desires, in his presence; the auditor shall note with red ink in the proper column of the account the item or items disallowed or deferred for further inquiry, distinguishing those disallowed from those deferred; and he shall forthwith, after audit, transmit one of the duplicates of each account to the county treasurer, having first indorsed on such account a certificate showing the amount found to be due to the claimant. 10 Edw. VII. c. 41, s. 38.

41. The treasurer of the county shall pay the accounts Transmission of accounts to Clerk of Criminal Justice accounts. so approved and take receipts therefor, and shall transmit the receipted accounts, with a proper statement of account, to the Clerk of Criminal Justice Accounts at Toronto, and warrants shall be issued for the amount of such payments to the county treasurer quarterly. 10 Edw. VII. c. 41, s. 39.

42. The Treasurer of Ontario may disallow any sum which Provincial Treasurer may disallow sums if improperly allowed. has been improperly allowed by the auditor, and, unless the same is disallowed because not payable by the Province, if

the same has been paid meanwhile by the county treasurer, he shall deduct the amount from any money which may, within a year next thereafter, be payable by the county to the person to whom the payment was erroneously made, and if no money, or not sufficient money, shall be so payable the Province shall make good to the county the amount or the deficiency, as the case may be. 10 Edw. VII. c. 41, s. 40.

PART IV.

Payment
of expenses
of criminal
justice.

43.—(1) Such of the expenses of the administration of criminal justice as are mentioned in Schedule C shall be paid out of the Consolidated Revenue Fund.

Subject to
Part III, all
accounts to
be audited in
such manner
as the Lieut.-
Governor in
Council ap-
points.

(2) Subject to the provisions of Part III, all accounts of or relating to such expenses shall be examined, audited, vouched and approved under such regulations as the Lieutenant-Governor in Council may prescribe. 10 Edw. VII. c. 41, s. 41.

SCHEDULE A.

FEES TO BE RECEIVED BY SHERIFFS, CORONERS, CLERKS OF THE PEACE, CROWN ATTORNEYS, CLERKS OF COURTS, CONSTABLES AND CRIERS:

SHERIFFS.

1. Attending sittings of the High Court Division, <i>per diem</i>	\$5.00
2. Attending the General Sessions, <i>per diem</i>	5 00
3. Summoning each Grand Jury for the High Court Division or General Sessions	12 00
4. Summoning each Petit Jury for the High Court Division or General Sessions	24 00
5. For every prisoner discharged from gaol, having been committed by warrant for trial at the High Court Division or General Sessions	1 00
6. For the discharge from gaol of every prisoner convicted by a police magistrate under Part XV. of <i>The Criminal Code</i>	1 00
7. Bringing up each prisoner for arraignment, trial and sen- tence—in all, for each prisoner, whether convicted or acquitted	2 00
8. For arraignment, trial and sentence, in all for each prisoner, whether convicted or acquitted, who has been out on bail	2 00
9. Drawing calendar of prisoners for trial at the High Court Division, including copies	5 00
10. Advertising the holding the sittings of the High Court Division	4 00
11. Advertising the holding of the Court of General Sessions	4 00

12. Every annual or general return, required by law or by the Government, respecting the gaol or the prisoners therein	\$5 00
13. Every other return made to the Government	4 00
14. Every return made to the Assembly	4 00
15. Every return to the Court of General Sessions of the Peace required by statute or by order of the court.....	2 00
16. Every return required by the county council	1 00
17. Every return to the inspector of legal offices	2 00
18. Drawing calendar of prisoners for trial at the General Sessions, including copies	4 00
19. Returning precepts to the High Court Division or General Sessions	4 00
20. Conveying prisoners sentenced at High Court Division or General Sessions, to the penitentiary or reformatory, or to another county (exclusive of disbursements), for each day necessarily employed	6 00
21. Arrest of each person upon a warrant, (<i>to be paid out of the County funds, or by the party, as the case may be</i>)	3 00
22. Serving subpoena upon each person, (<i>to be paid out of the County funds or by the party, as the case may be</i>).....	1 00
23. Travelling in going to execute warrant or serve subpoena, or in returning with a prisoner, <i>per mile actually travelled</i>	13
<i>(To be paid out of the County funds, or by the party, as the case may be; where the service has not been effected, the board of audit is to be satisfied that due diligence has been used.)</i>	
24. Conveying prisoners on attachment, Judge's Order or Habeas Corpus to another county or district, exclusive of disbursements, where no charge allowed by law, for each day necessarily employed, (<i>to be paid out of the county funds, or by the party, as the case may be</i>)	6 00
25. Making return upon attachment or writ of Habeas Corpus, (<i>to be paid out of the county funds, or by the party, as the case may be</i>).....	2 00
26. Levying fines or issues on recognizances estreated, or other process (<i>to be levied under section 6 of Part I</i>)	\$5 per \$100 on the first \$400 of the sum levied, exclusive of mileage at 10 cents per mile, and on all sums above \$400 the same allowance as on executions in civil proceedings. Where a levy has not been made, \$2 for every \$100 of the amount received in lieu of above amount.
27. Carrying into execution the sentence of the Court in capital cases.....	<i>All such sums as are unavoidably disbursed.</i>
28. Attending and superintending the execution in such cases	20 00
29. Summoning each constable to attend the High Court Division or General Sessions, exclusive of mileage at 10 cents a mile	50
30. Keeping a record of jurors who have served each court.....	2 00
31. Disbursements actually and necessarily made in guarding prisoners, or in their conveyance to the peniten-	

tiary or reformatory, to any other county or elsewhere, or for other purposes in the discharge of the duties of his office (where not provided for by law, nor hereinbefore specifically provided for) to be rendered in account in detail with the proper vouchers, to the satisfaction of the board of audit, and to be by the board allowed

32. Disbursements actually and necessarily incurred while in attendance upon a Judge of the High Court Division when holding a sittings of the High Court Division or incurred in obedience to his order, to be paid by the Treasurer of the county upon the order of the sheriff...
 33. Keeping a record of constables at the High Court Division or General Sessions, each \$2 00

For services in the County or District Court Judge's Criminal Court.

34. Notification to judge, for each prisoner 1 00
 35. Bringing up each prisoner before judge, to elect as to mode of trial, including attendance at court 2 00
 36. Bringing up each prisoner for arraignment on trial, and for sentence, including attendance at court, whether convicted or acquitted 2 00
 37. Serving subpoenas, arrest under warrant, travel to serve or execute a process, and conveying prisoner to penitentiary or reformatory—the like sum as is allowed for like services in other cases under this Act.

For services in connection with offenders sentenced, or liable to be removed to the Ontario Reformatory or Mercer Reformatory.

38. Making special return of prisoners sentenced to Ontario Reformatory or Mercer Reformatory and of prisoners eligible for removal to the Ontario Reformatory or Mercer Reformatory, as the Inspector may direct (each prisoner) 1 00
 (Not more than \$5 to be allowed for any one return, and each return must cover all prisoners in gaol when the same is made.)
 39. Certified copy of sentence 50
 40. Taking prisoner to railway station, to be delivered to bailiff or reformatory, in addition to other expenses incurred in such duty 1 00

For other services.

41. Return and services in respect of inquisition on body of a prisoner dying in gaol 4 00
 42. General supervision over the gaol and prisoners therein, and the books kept in connection with the gaol, in addition to any other allowance, and for stationery and postage per quarter 25 00
 43. Every prisoner discharged from gaol other than prisoners committed by warrant for trial at the sittings of the High Court Division or General Sessions 1 00
 44. Services performed under section 1059 of *The Criminal Code*, in each case disposed of under that section ... 2 00

- 45 Each day's attendance at an adjournment of the County or District Court Judge's Criminal Court, in each case \$2 00
Not more than \$4 to be allowed in respect of the same day's service.
46. For attending and carrying out a sentence in cases of flogging, and reasonable disbursements in preparing a triangle, cat, and straps, and a man to execute sentence 6 00
- 10 Edw. VII. c. 41, Schedule A, "Sheriffs"; 3-4 Geo. V. c. 18, s. 21 (6).

[For Schedule of Coroners' fees, see *The Coroners Act*, Rev. Stat. c. 92.]

CLERKS OF THE PEACE.

1. Drawing precepts to summon the grand and petit juries for the General Sessions; attending judge to sign same; and transmitting to the sheriff	6 00
2. Attending General Sessions or board of audit for the first day	6 00
3. For each additional day, not including time occupied by County Court	4 00
4. Making up records of General Sessions (when completed), including quarterly record of returns of convictions required by <i>The Justices of the Peace Act</i> ...	15 00
5. Notice of every appointment of a constable, under <i>The Constables Act</i> or other officer appointed by the General Sessions or by the judge	25
6. Drawing every special order of the General Sessions necessary to be communicated to any person, and entering it on record	1 00
7. Notice of any order made by the General Sessions, and letter transmitting same, when necessary	50
8. Copying orders of the court, and causing the same to be published where necessary, exclusive of the expense of publication, per folio	10
9. Issuing subpoena	75
10. Every copy of subpoena (when necessary and when not made out or charged for by the crown attorney)	25
11. Issuing bench warrant	1 00
12. Every recognizance to keep the peace, or for good behaviour	1 00
13. Every recognizance to appear	50
14. Calling parties on their recognizance and recording their non-appearance, for each person called	25
15. Discharging a recognizance	50
16. Drawing order of the General Sessions to estreat and put in process (on the whole list)	1 00
17. Entering an order to remit an estreat, and recording an entry of the same	50
18. Preparing list each sittings: specifying names of persons making default under s. 6 of the <i>Estreats Act</i>	50

19. Entering and extracting upon a roll, in duplicate, the fines, issues, amerciaments, and forfeited recognizances recorded in each session, making oath to the same, and transmitting to the sheriff	\$2 00
20. Making out and delivering to the sheriff the writ of <i>fiery facias</i> and <i>capias</i> thereon	75
21. Making out and certifying copy of roll and return of the sheriff, and transmitting it to the Provincial Treasurer	1 00
22. Copies of depositions or examinations furnished to prisoners accused of felony, or their counsel, per folio of 100 words (when required by the accused, or his counsel, and ordered by the court. This fee not to be charged when copies are furnished by the crown attorney)	10
23. Receiving and filing each indictment, when bill returned by the grand jury	50
24. Receiving and filing each presentment of the grand jury	50
25. For a copy of presentment of the grand jury, forwarded by order of the Court of General Sessions, per folio ...	10
26. Arraigning each prisoner, or defendant	75
27. Recording plea, or receiving and filing demurrer	50
28. Empanelling and swearing the grand jury	1 00
29. Empanelling and swearing the petit jury in each case.....	75
30. Swearing each witness before the grand jury	20
31. Charging the jury with prisoner or defendant upon each indictment	1 00
32. For filing each exhibit, list, return, or other paper connected with the proceedings in the Court of General Sessions where no charge therefor is specially provided	10
33. Swearing each witness upon any trial or proceeding before the court	20
34. Receiving and recording verdict of petit jury	50
35. Recording each judgment or sentence of the court	1 00
36. Making out and delivering to the sheriff a calendar of the sentences in each court	1 50
37. Making out a certified copy or abstract of sentences sent with the prisoners to the penitentiary, or reformatory after each session	1 00
38. Making up record of conviction or acquittal	1 00
39. Discharging prisoner by proclamation, each	50
40. Every allowance of certiorari, to be paid by the party applying except when he is in indigent circumstances...	1 00
41. Furnishing to sheriff and each of the coroners revised lists of constables, when a revision has been made and when ordered to be done by the justices in general or adjourned sessions, for each list	1 00
42. Reading statute or public proclamation, when required to be done by law	25
43. Making every copy or extract of a record, or paper, or document of any kind, required to be made by law, or by the order of the justices in sessions, or by the order of the Government, in any of its departments, or for the information and use of the Government, when required, and when no charge is fixed by law, per folio...	10
44. Causing public notice to be proclaimed in open court of the General Sessions, of an intention to alter or rescind	

previous orders respecting the number and extent of any one or more of the Division Court limits, under section 15 of the Division Courts Act	\$0 50
45. Drawing up such orders of General Sessions, for altering the limits of Division Courts, per folio	20
46. Making and transmitting copies of such orders to the Government, per folio	10
47. Making and transmitting copies of such orders to each clerk of a Division Court affected by such alterations, per folio	10
48. Making up book of orders of General Sessions, declaring the limits of Division Courts	1 50
49. Making and transmitting copies (with letter) to the Clerk of each Division Court	1 00
50. Making and transmitting a copy thereof to the Government	1 00
51. For every necessary certificate, per folio	20
52. Making and transmitting to the Provincial Treasurer, a return or schedule of all convictions which have taken place before the court, each list including letter	1 00
53. Causing notice to be published of any special or adjourned General Sessions, when directed by the Chairman, or other two justices, so to do, besides amount paid for publication	1 00
54. Sending notice of any such General Sessions to the justices individually, when it is directed by the chairman, or other two justices, for each notice	20
55. Attending each adjourned or special sittings of the General Sessions, and making up record of same, when completed	5 00
56. Making out warrant of distress or commitment, in any case where no fee is specially assigned therefor by any statute, or by this tariff	1 00
57. Swearing constable in open court	20
58. Receiving, filing, and recording each oath of qualification of a justice of the peace	25
59. Every letter written by direction of the justices in Sessions to the Government, or justices, or coroners, or constables, or others upon matters connected with the business of the court or the administration of justice	25
60. All necessary outlays for postage and publishing to be added in all cases.	
The above tariff of fees and costs shall also be applicable in all proceedings where costs are chargeable or ordered to be paid by private parties, together with the following additional items:	
61. Certifying the result of each appeal heard and determined by the court to the convicting justice or to any party requesting the same under any statute	50
62. For every single search	20
63. For every general search	50
64. Receiving and filing notices of appeal and the appeal from any judgment or conviction by one or more Justices where an appeal is given by law to the Court of General Sessions of the Peace	50

65. When the appeal called,—on reading the conviction, notice of appeal and recognizance	\$0 50
66. For all other services upon the trial of such appeal case, when tried by a jury, the same charges as hereinbefore specified in other trials.	
67. Issuing process to enforce the order of the court in appeal case when required by law	1 00
68. For each copy of schedule of the times and places of holding the Division Courts with the order of sessions and forwarding the same to each division court clerk.....	50
69. Drawing bill of costs, including taxation and filing the same where necessary to be made and filed, as in cases of assault, nuisances or the like, and in appeals, (to be paid by the party)	50
70. For every certificate required of proof of a deed, (to be paid by the party applying for the same)	1 00
71. Receiving and filing affidavit of bastardy, (<i>see Rev. Stat. c. 169, s. 8</i>) (to be paid by the party producing it).....	25
72. Receiving and filing each tender for any public work, or supply, or printing, or other service	25
73. Making out a list of the several tenders on each occasion, as they are opened, specifying the names, prices, and other particulars, and filing the same, when required to be done by the justices	50
74. Drawing bonds or agreements for the delivery of articles, or for doing the work for the gaol or other county purposes, and attending execution, when required by the justices	1 00
75. Receiving and filing accounts and demands, preferred against the county, numbering them, and submitting them for audit, and making out the cheques	4 00
76. Making out and delivering lists of orders on the treasurer, made at each audit	2 00
77. For every report or return required by statute, or by the Government, where no remuneration has been provided by this table or by statute	1 00
78. Making out and transmitting a return to the Government of justices and coroners who have taken the oaths, when required to be done, for each return	1 00
79. Swearing each party to an affidavit, where no charge is elsewhere provided for it (to be paid out of the county funds, or by the party for whom the affidavit is sworn, according to the nature of the case).....	20
80. Drawing certificate of approval by the justices in sessions, of sureties tendered by the sheriff, (to be paid by sheriff)	50
81. Administering oaths to any public officer, when authorized so to do, (to be paid by the officer)	25
82. For distributing the statutes to the justices and county officers, or others, when directed by Statute or the Government so to do, and taking receipts therefor; from each justice or officer	10
83. For accounting to the county member for the copies of statutes not called for by the justices and county officers, and delivering the same to him, wherever such duty is required by statute, or by the Government and no other fee allowed	1 00

84. For receiving and filing Voters' Lists for an entire municipality under *The Ontario Voters' Lists Act*, ss. 21 and 22 each list \$0 25
85. For filing each list, return, or other paper, where no charge is specially provided for, except accounts and claims against the county, and papers connected with matters to be charged against private individuals, (*to be paid out of the county funds, or by the party for whom the service is rendered, according to the nature of the case*) 08

(a) When the offices of the clerk of the peace and crown attorney are held by the same person and there is a similar or the same fee provided for the same service to each officer, only one fee is to be charged or allowed.

(b) Items numbered from 1 to 67 of the foregoing tariff shall only apply to proceedings in the Courts of General Sessions of the Peace, and shall not supersede any existing tariff of fees for services rendered by the clerk of the peace out of sessions.

For services in County or District Court Judge's Criminal Court.

86. Attending and service in court, and making all necessary entries; for each prisoner brought before the judge, and not consenting to be tried—in all 50
87. For attendance in court, and services rendered at trial, making necessary record of proceedings and all necessary entries, including calendar of conviction; for each prisoner 2 00
88. Preparing judge's warrant to bring up the body of prisoner, and delivering the same to sheriff—for each prisoner 50
89. Issuing writ of summons to witness when necessary 40
90. Copy of summons, each 20
91. Warrant of remand, when issued and delivered to Sheriff 50
92. For warrant to arrest, taking and estreating recognizances and proceedings to enforce same.....(*the same fees as allowed for like services at the General Sessions of the Peace.*)

10 Edw. VII. c. 41, Schedule A, "Clerks of the Peace."

CROWN ATTORNEY.

In all criminal cases tried at the Courts of General Sessions of the Peace or the County Judge's Criminal Courts, in which no costs have been ordered to be paid, or, if ordered to be paid, cannot be made of the defendant, the crown attorney shall be entitled to receive for the services rendered by him in such case, the following fees to be paid upon the certificate of the chairman, and to be taken in lieu of, and not in addition to, the fees which have been heretofore payable for services rendered in such cases, viz.:

1. For receiving and examining all informations, depositions, documents, and papers connected with a criminal charge \$2 00
2. For preparing draft and engrossed copy of every indictment, or charge 2 00

3. For all business (except items 1 and 2 *supra*, and the following) in conducting the prosecution to judgment, as well before as after trial\$10 00
4. For every copy of subpoena 20
5. For every other service not specified above, and for reports on cases of unusual and important character, a *quantum meruit* to be determined by the Attorney General, on a consideration of the particular circumstances.
6. Receiving and examining all informations and other documents and papers in connection with each criminal case at a sittings of the High Court Division upon a certificate of the counsel for the Crown at the trial, that the fee should be allowed 4 00
- N.B.—*Half the fee to be charged if the case has remained undisposed of from a prior court and is prosecuted to judgment. These fees not to be allowed if the crown attorney is also counsel for the Crown.*
7. Every copy of a subpoena at a trial at a sittings of the High Court Division 10
8. Affidavit and application to Judge for *habeas corpus ad testificandum* and writ, etc..... 2 00
9. Postage per quarter 2 00
10. For attendance on the Judge of the County Court by his special requisition in writing, where application is made by a prisoner to be admitted to bail 1 00
11. For attending police court in summary trials under Part XVI. of *The Criminal Code* where requested in writing by the police magistrate to attend 5 00

(a).—Where a number of charges are pending against the same person, and a conviction has been obtained on one or more indictments, fees, and costs on the further proceedings upon the other charges, are not to be made or allowed on taxation, unless in cases where the chairman would, in the event of additional convictions, impose a heavier sentence, or unless there are special circumstances, which, in the opinion of the chairman, render it expedient that the other cases, or some of them, should be proceeded with and tried.

(b).—In cases of indictment for the obstruction, or the non-repair of a highway or bridge, or of indictment for nuisance (where there is a *bona fide* dispute as to boundary, or title, or claim of right, and where no present public inconvenience is being suffered from what is complained of) the crown attorney shall not be entitled to charge costs to the public, without the special sanction of the Attorney General, but will collect his fees and costs from the parties only.

(c).—When the offices of crown attorney and clerk of the peace are held by the same individual, and a similar or the same fee is provided for the same service to each officer only one fee is to be charged or allowed.

10 Edw. VII. c. 41, Schedule A, "Crown Attorneys";
3-4 Geo. V. c. 18, s. 21 (5).

CLERKS OF POLICE COURTS AND OTHER COURTS.

1. For certificates of previous conviction under section 982 of the Criminal Code 1 00
- 3-4 Geo. V. c. 18, s. 21 (7).

CONSTABLES.

1. Arrest of each individual upon a warrant	\$1 50
2. Serving summons or subpoena	25
3. Mileage to serve summons, subpoena or to make an arrest	13
4. Mileage when service cannot be effected, upon proof of due diligence	13
5. Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in his conveyance	10
6. Returning with prisoner after arrest—conveyance or railway fare for prisoner. Only reasonable disbursements to be allowed, and public conveyance to be used when practicable	
7. Attending justices on summary trials, or on examination of prisoners charged with crime, for each day necessarily employed in one or more cases	1 50
8. Attending sittings of High Court Division or General Sessions, each day	2 00
9. Mileage travelling to attend High Court Division, General Sessions, or before justices, (<i>When public conveyance, can be taken, only reasonable disbursements to be allowed</i>)	10
10. Summoning jury for coroner's inquest, including attending at inquest, and all services in respect thereof, if held on same day as jury summoned	3 00
11. Attending each adjournment thereof.....	1 50
12. Serving summons or subpoena to attend before coroner, (subject to No. 10)	25
13. Mileage serving same	13
14. Exhuming body under coroner's warrant	4 00
15. Reburying same	2 00
16. Serving distress warrant, and returning same	1 50
17. Advertising under distress warrant	1 00
18. Travelling to make distress, or to search for goods to make distress, when no goods are found	13
19. Appraisments, whether by one appraiser or more,..... <i>two cents in the dollar on the value of the goods.</i>	
20. Catalogue, sale and commission, and delivery of goods... <i>five cents in the dollar on the net produce of the goods.</i>	
21. Executing search warrant	1 50
22. Serving notices on constables, when personally served ...	50
10 Edw. VII. c. 41, Schedules A, "Constables"; 2 Geo. V. c. 17, s. 23 (1).	

CRIERS.

1. Making proclamation for opening or adjourning the High Court Division, General Sessions, County Court, and County Court Judge's Criminal Court	25
2. Making every other proclamation	25
3. Calling and swearing grand jury	50

- | | |
|--|--------|
| 4. Calling and swearing each petit jury | \$0 50 |
| 5. Calling and swearing each witness or constable | 10 |
| 6. Attending High Court Division, General Sessions, County Court, and County or District Court Judge's Criminal Court, <i>per diem</i> | 2 00 |

10 Edw. VII. c. 41, Schedule A, "Criers."

SCHEDULE B.

Province of Ontario.

Dr. to A. B.,

Constable of the County of

Date of Service.	Number of Item.	Nature of Service and Particulars of Mileage.	Amount claimed by official.	Deferred for further inquiry.	Dis-allowed.	Amount payable by the govern-ment.

In the case of a constable or coroner, the justice of the peace shall add the following certificate:

I hereby certify that the above services were duly performed by constable _____ under my directions, and that the above named prisoner was committed by me for trial at the High Court Division (or as the case may be).

F. G.,

Justice of the Peace for the above County.

(Affidavit on back.)

County of } I of
To Wit: } in the county of make oath and
 } say:—

(1) That the within account of services performed by me is true in every particular.

(2) That I have not been paid any part of the charges, nor has any other person to my knowledge received payment for me or on my behalf, nor has any other person, to my knowledge, rendered an account for the same services.

(3) That to perform such services I necessarily travelled the distances in the account mentioned.*

Sworn before me at _____ in the County of _____
this _____ day of _____ A.D. 19 _____.

[* Where special explanations are given, add: (4) "and that the explanatory statements written upon the said account are true in every particular."]

Endorsement on back of Account.

January, 19

County of Grey.

Account of A. B.,

Constable.

10 Edw. VII. c. 41, Schedule B.

SCHEDULE C.

SHERIFFS.

1. Attending the High Court Division. (*See Tariff in Schedule A. Sheriffs, item 1.*)

2. Attending the General Sessions. (*Tariff, item 2.*)

3. Summoning each grand jury for the High Court Division or general Sessions. (*Tariff, item 3.*)

4. Summoning each petit jury for the High Court Division or General Sessions. (*Tariff, item 4.*)

5. For every prisoner discharged from gaol, having been committed by warrant for trial at the High Court Division or General Sessions. (*Tariff, item 5.*)

6. For the discharge from gaol of every prisoner convicted by a police magistrate under Part XV. of *The Criminal Code*. (*Tariff, item 6.*)

7. Bringing up each prisoner for arraignment, trial and sentence, whether convicted or acquitted. (*Tariff, item 7.*)

8. For arraignment, trial and sentence in all for each prisoner, whether convicted or acquitted, who has been out on bail. (*Tariff, item 8.*)

9. Drawing calendar of prisoners for trial at the High Court Division, including copies. (*Tariff, item 9.*)

10. Drawing calendar of prisoners for trial at the General Sessions, including copies. (*Tariff, item 13.*)

11. Advertising the holding of the High Court Division or General Sessions. (*Tariff, items 10 and 11.*)

12. Every annual or general return, required by law, or by the Government, respecting the gaol or the prisoners therein. (*Tariff, item 12.*)

13. Every other return made to the Government or the Legislature or to the sessions, required by statute or by order of the court. (*Tariff, items 13, 14 & 15.*)

14. Every return to the inspector of legal offices. (*Tariff, item 17.*)

15. Returning precepts to the High Court Division or General Sessions. (*Tariff, item 19.*)

16. Conveying prisoners to the penitentiary or reformatory, or to another county or district and disbursements. (*Tariff, item 20.*)

17. Arrest of each individual upon a warrant (if payable by the Crown.) (*Tariff, item 21.*)

18. Serving subpœna upon each person, (if payable by the Crown.) (*Tariff, item 22.*)

19. Travelling in going to execute warrant or serve subpœna, and in returning with prisoner, (if payable by the Crown.) (*Tariff, item 23.*)

20. Conveying prisoner on attachment, judge's order or *Habeas Corpus* to another county, and disbursements, (if payable by the Crown.) (*Tariff, item 24.*)

21. Making return upon attachment or writ of *Habeas Corpus*, (if payable by the Crown.) (*Tariff, item 25.*)

22. Levying fines or issues on recognizances estreated, and mileage. (*Tariff, item 26.*)

23. Disbursements in carrying into execution the sentence of the court in capital cases. (*Tariff, item 27.*)

24. Attending and superintending the execution in such cases (*Tariff, item 28.*)

25. Summoning each constable to attend the High Division Court or General Sessions. (*Tariff, item 29.*)

26. Keeping a record of jurors who have served at each court (*Tariff, item 30.*)

27. All disbursements actually and necessarily made in guarding prisoners, or in their conveyance to the penitentiary or reformatory, or to any other county or district or elsewhere, or for other purposes in the discharge of the duties of his office, (when not otherwise provided for), to be allowed by the board of audit. (*Tariff, item 31.*)

For services in the County Judge's Criminal Court.

28. Notification to judge. (*Tariff, item 34.*)

29. Bringing up prisoners before judge to elect as to mode of trial, including attendance at court. (*Tariff, item 35.*)

30. Bringing up prisoner for arraignment on trial and for sentence including attendance at court. (*Tariff, item 36.*)

31. Serving subpœnas, arrest under warrant, travel to serve or execute process, and conveying prisoners to penitentiary or reformatory (where payable by the Crown.) (*Tariff, item 37.*)

For services in connection with offenders sentenced, or liable to be removed to the Ontario Reformatory or Mercer Reformatory.

32. Making special return of prisoners sentenced to Ontario Reformatory or Mercer Reformatory and of such persons eligible for removal to Ontario Reformatory or Mercer Reformatory as the Inspector may direct. (*Tariff, item 38.*)

33. Certified copy of sentence. (*Tariff, item 39.*)

34. Taking prisoner to railway station to be delivered to Ontario Reformatory or Mercer Reformatory, bailiff, in addition to other necessary expenses incurred in such duty. (*Tariff, item 40.*)

35. For general supervision over the gaol and prisoners therein, and the books kept in connection with the gaol, in addition to any other allowance, and for stationery and postage, per quarter. (*Tariff, item 42.*)

36. For every prisoner discharged from gaol other than prisoners committed by warrant for trial at the Assizes or General Sessions. (*Tariff, item 43.*)

37. For services performed under section 1059 of *The Criminal Code*. (*Tariff, item 44.*)

38. For each day's attendance at an adjournment of the County or District Court Judge's Criminal Court. (*Tariff, item 45.*)

39. Attending and carrying out sentence in cases of flogging and disbursements connected therewith. (*Tariff, item 46.*)

10 Edw. VII. c. 41, Schedule C, "Sheriffs"; 3-4 Geo. V. c. 18, s. 21 (10).

[*Note.—By the Coroners Act, the fees of Coroners as set forth in Schedule A to that Act are payable out of the Consolidated Revenue Fund.*]

CLERKS OF THE PEACE.

1. Drawing precept to summon the grand and petit jury, attending judge to sign same and transmitting to the sheriff. (*See Tariff, Clerks of the Peace, item 1.*)

2. Attending each General Sessions. (*Tariff, item 2.*)

3. Making up record of each general sessions. (*Tariff, item 4.*)

4. Notice of every appointment of a constable under *The Constables Act*, or other officer appointed by the justices in session, and notice of any order made by the general sessions when required to be notified to any person or party. (*Tariff, items 5 and 7.*)

5. Issuing subpoena, (*if payable by the Crown.*) (*Tariff, item 9.*)

6. Issuing bench warrant. (*Tariff, item 11.*)

7. Every recognizance of the peace for good behaviour. (*Tariff, item 12.*)

8. Drawing out and taking each recognizance to appear, either of prosecutor, defendant or witness, (*if payable by the Crown.*) (*Tariff, item 13.*)

9. Calling parties on their recognizance and recording their non-appearance, (*if payable by the Crown.*) (*Tariff, item 14.*)

10. Drawing order of the judge to estreat and put in process. (*Tariff, item 16.*)

11. Entering any order of the court of general sessions or of the judge of the county or district to remit an estreat and recording an entry of the same, (*if payable by the Crown.*) (*Tariff, item 17.*)

12. Making out lists of forfeited recognizances and fines to submit to the presiding judge after each general sessions in order that they may be estreated. (*Tariff, item 18.*)

13. Entering and extracting upon a roll, in duplicate, the fines, issues, amerciaments and forfeited recognizances recorded in each general sessions, making oath to the same, and transmitting it to the sheriff. (*Tariff, item 19.*)

14. Making out and delivering to the sheriff the writ of *feri facias* and *capias* thereon. (*Tariff, item 20.*)

15. Making out and certifying copy of roll and return of sheriff, and transmitting it to Provincial Treasurer. (*Tariff, item 21.*)

16. Copies of depositions or examinations furnished to prisoners, defendants, or their counsel, when required by the party or his counsel, (*if payable by the Crown.*) (*Tariff, item 22.*)

17. Receiving and filing each presentment of the grand jury. (*Tariff, item 24.*)

18. Arraigning each prisoner or defendant indicted, and recording plea (*if payable by the Crown.*) (*Tariff, items 26 and 27.*)

19. Empanelling and swearing the jury in every case, whether criminal or otherwise, where by law a trial by jury is to be had at the General Sessions, (*if payable by the Crown.*) (*Tariff, item 29.*)

20. Swearing each witness upon any trial by jury, or to go before the grand jury, (*if payable by the Crown.*) (*Tariff, items 30 and 33.*)

21. Charging the jury with the prisoner or defendant, upon each indictment, (*if payable by the Crown.*) (*Tariff, item 31.*)

22. Filing each exhibit upon a trial, (*if payable by the Crown.*) (*Tariff, item 32.*)

23. Receiving and recording each verdict of a petit jury, in any case of trial by jury, (*if payable by the Crown.*) (*Tariff, item 34.*)

24. Recording each judgment or sentence of the court, upon a verdict or confession, (*if payable by the Crown.*) (*Tariff, item 35.*)

25. Making out and delivering to the sheriff a calendar of the sentences at each court. (*Tariff, item 36.*) (*item 37.*)

26. Certified copy of sentences sent with the prisoners to the penitentiary or reformatory after each general sessions. (*Tariff,*

27. Making up record of conviction or acquittal, in any case where necessary, (*if payable by the Crown.*) (*Tariff, item 38.*)

28. Discharging any prisoner by proclamation. (*Tariff, item, 39.*)

29. Furnishing to sheriff and coroners revised lists of constables, whenever ordered to be done by the justices in General Sessions. (*Tariff, item 41.*)

30. Drawing orders of General Sessions for altering the limits of Division Courts. (*Tariff, item 45.*)

31. Making out and transmitting copies of such orders to the Government. (*Tariff, item 46.*)

32. Making out and transmitting copies of such orders to each Division Court affected by the alteration. (*Tariff, item 47.*)

33. Making up books of orders of general sessions declaring the limits of the Division Courts, and entering the times and places of holding the courts. (*Tariff, item 48.*)

34. Making out and transmitting copies (with letter) to the clerk of each Division Court, of the Divisions made by the General Sessions. (*Tariff, item 49.*)

35. Making out and transmitting a copy thereof to the Government. (*Tariff, item 50.*)

36. For each copy of schedule of Division Courts, with the order of General Sessions for publication. (*Tariff, item 63.*)

37. Swearing each party to an affidavit, when no charge is elsewhere provided for it, (*if payable by the Crown.*) (*Tariff, item 79.*)

For services in County, or District Court Judge's Criminal Court.

38. Attending and service in court, and making all necessary entries for each prisoner brought before the judge, and not consenting to be tried. (*Tariff, item 86.*)

39. For attendance in court and services rendered at trial making necessary record of proceedings and all necessary entries, including calendar of conviction for each prisoner. (*Tariff, item 87.*)

40. Preparing judge's warrant to bring up the body of prisoner, and delivering same to sheriff. (*Tariff, item 88.*)

41. Issuing writ of summons to witness. (*Tariff, item 89.*)
42. Copy of summons. (*Tariff, item 90.*)
43. Warrant of remand, when issued and delivered to sheriff. (*Tariff, item 91.*)
44. For warrant to arrest, taking and estreating recognizances and proceedings to enforce same. (*Tariff, item 92.*)

10 Edw. VII. c. 41, Schedule C, "Clerks of the Peace."

CROWN ATTORNEYS.

1. For receiving and examining all informations, depositions, documents, and papers connected with a criminal charge. (*Tariff item No. 1.*)
 2. For preparing draft and engrossed copy of every indictment, or charge. (*Tariff item No. 2.*)
 3. For all business (except items 1 and 2 *supra*, and the following), in conducting the prosecution to judgment, as well before as after trial. (*Tariff item No. 3.*)
 4. For every copy of subpoena. (*Tariff item No. 4.*)
 5. For every other service not specified above, and for reports on cases of unusual and important character a *quantum meruit* to be determined by the Attorney-General on a consideration of the particular circumstances. (*Tariff item No. 5.*)
 6. Receiving and examining all informations and other documents and papers in connection with each criminal case at a sittings of the High Court Division upon the certificate of the counsel for the Crown at the trial that the fee should be allowed. (*Tariff item No. 6.*)
- N.B.—Half the fee to be charged if the case has remained undisposed of from a prior court and is prosecuted to judgment. These fees not to be allowed if the crown attorney is also counsel for the Crown.*
7. Every copy of subpoena. (*Tariff item No. 7.*)
 8. Affidavit and application to judge for *habeas corpus ad testificandum* and writ, etc. (*Tariff item No. 8.*)
 9. Postages per quarter. (*Tariff item No. 9.*)
 10. For attendance on the judge of the County Court by his special requisition in writing, where application is made by a prisoner to be admitted to Bail. (*Tariff item No. 10.*)
 11. For attending police court in summary trials under Part XVI. of the Criminal Code where requested in writing by the Police Magistrate to attend. (*Tariff item No. 11.*)

3-4 Geo. V. c. 18, s. 21 (8).

CLERKS OF THE POLICE COURTS AND OTHER COURTS.

For certificate of previous conviction (*Tariff, item 1.*)

3-4 Geo. V. c. 18, s. 21 (9).

CONSTABLES.

1. Arrest of each individual upon a warrant, (if payable by the Crown.) (*Tariff, Constables item 1.*)
2. Serving summons or subpoena, (if payable by the Crown.) (*Tariff, item 2.*)
3. Mileage, (if payable by the Crown.) (*Tariff, item 3.*)

4. Mileage in going to serve summons or warrant when the service has not been effected; the board of audit being satisfied that due diligence was used, (*if payable by the Crown.*) (*Tariff, item 4.*)

5. Three quarters of the fee payable to constables attending High Court Division or General Sessions. (*See Tariff, item 8 and sec. 5.*)

6. Mileage travelling to attend High Court Division General Sessions or before justices. (*Tariff, item 9.*)

7. Attending any justices on summary trials or on the examination of prisoners charged with any crime. (*Tariff, item 7.*)

8. Taking prisoners to gaol, and disbursements necessarily expended in their conveyance. (*Tariff, item 5.*)

9. Returning with prisoner after arrest, conveyance or railway fare for prisoner. Only reasonable disbursements to be allowed, and public conveyance to be used when practicable. (*Tariff, item 6.*)

10. Summoning jury for inquest and services at same. (*Tariff, item 10.*)

11. Attending inquest for each day other than the first. (*Tariff, item 11.*)

12. Serving summons or subpoena to attend before coroner, (*Tariff, item 12.*)

13. Mileage serving same. (*Tariff, item 13.*)

14. Serving notice of appointment of constables, when personally served. (*Tariff, item 22.*)

10 Edw. VII. c. 41, Schedule C, "Constables."

CRIERS.

1. Making proclamation for opening or adjourning the sittings of the High Court Division and General Sessions. (*Tariff, Criers, item 1.*)

2. Making every other proclamation. (*Tariff, item 2.*)

3. Calling and swearing grand jury. (*Tariff, item 3.*)

4. Calling and swearing every petit jury. (*Tariff, item 4.*)

5. Calling and swearing every witness or constable. (*Tariff, item 5.*)

6. Attending High Court Division and General Sessions. *Tariff, item 6.*)

10 Edw. VII. c. 41, Schedule C, "Criers."

OTHER MATTERS.

1. The maintenance of prisoners confined upon criminal charges—
This item shall include the maintenance of prisoners convicted by police magistrates, under Part XV. of *The Criminal Code*, for indictable offences, and confined upon such conviction in any common gaol within Ontario.

2. A proportion of the salaries of the gaoler, matron and gaol surgeon of each county gaol, and of the payment of turnkeys—

3. Medicines, fuel and other similar necessities for the gaol, and the prisoners confined on criminal charges—

4. Disbursements in transporting prisoners to the penitentiary, or reformatory and for carrying other sentences of the courts into effect—

5. Fee to gaol surgeon for the examination of each prisoner eligible for removal or sentenced to central prison or to a reformatory.

10 Edw. VII. c. 41, Schedule C, "Other Matters"

CHAPTER 97.

An Act to provide for the Payment of Witnesses for the Crown.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Crown Witnesses Act*. Short title.
10 Edw. VII. c. 42, s. 1.

2. In this Act,

Interpre-
tation.

“Court,” shall mean and include the High Court Division, the Court of General Sessions of the Peace, the County or District Court Judge’s Criminal Court, and Courts for the summary trial of indictable offences under *The Criminal Code*. 10 Edw. VII. c. 42, s. 2. “Court.”
R.S.C. c. 146.

3. The Judge who holds the Court before which a prosecution or trial for an indictable offence takes place, may grant to any person who attends on recognizance or subpoena, or on the request of the Crown Counsel, to give evidence, or who gives evidence, on the part of the Crown, an order for payment of such sum as to the Judge seems reasonable and sufficient to compensate the witness for his costs and charges in attending as such witness; but in no case other than that of an expert witness shall such sum exceed the amount payable in civil cases in the Supreme Court. 10 Edw. VII. c. 42, s. 3. Compensation
to Crown
witnesses in
certain cases
for attendance
on prosecution
or trial.

4. Where a bill of indictment has not been preferred, or where the trial has not been proceeded with, the Judge may make a similar order in favour of any person who, in his opinion, *bona fide* attended the Court in obedience to a recognizance or subpoena. 10 Edw. VII. c. 42, s. 4. Or where no
indictment
preferred or
trial had.

5.—(1) The order shall not be made except on a certificate by the Counsel for the Crown, and by the Crown Attorney unless the Crown Attorney acts as Counsel for the Crown; and the certificate shall contain the particulars necessary in the affidavit required in civil cases to entitle a party to disbursements to witnesses, and shall be to the like effect, but the Judge may require further evidence and may grant or refuse the order. Certificate
whereon order
to be made.

Discretion as
to order.

Certificate in
absence of
Crown Attor-
ney.

(2) If some other person is acting for the Crown Attorney the certificate may be given by him. 10 Edw. VII. c. 42, s. 5.

Order, how
made out and
to whom
directed.

6. The order shall be forthwith made out by the proper officer of the Court and shall be directed to the treasurer of the county in which the offence was committed or was supposed to have been committed; or, if the offence was committed or was supposed to have been committed in a city, or in a town separated for municipal purposes from the county, the order shall be directed to the treasurer of the city or town. 10 Edw. VII. c. 42, s. 6.

Payment by
the treasurer.

7. The treasurer to whom the order is directed shall forthwith, out of the funds of the municipality in his hands, pay to each of the witnesses named the amount stated in the certificate, on his signing a receipt therefor in person. 10 Edw. VII. c. 42, s. 7.

Payment by a
treasurer on
whom order is
not made.

8. Where the trial takes place in a county other than the county in which the offence was committed the treasurer of the county in which the trial takes place, if applied to by the witness, shall forthwith pay the money in the first instance out of the funds of the municipality in his hands, and shall forthwith be reimbursed by the treasurer to whom the order is directed. 10 Edw. VII. c. 42, s. 8.

Re-imburse-
ment by
Province of
one-third.

9. One-third of the amount paid to witnesses under this Act shall be repaid to the municipality out of the Consolidated Revenue Fund, except as is hereinafter mentioned. 10 Edw. VII. c. 42, s. 9.

Idem; in full
where
witnesses sent
from unorgan-
ized districts.

10. In respect of witnesses in cases sent from the unorganized districts for trial in any county the expenses of the witnesses shall be repaid in full out of the Consolidated Revenue Fund. 10 Edw. VII. c. 42, s. 10.

Witness in
cases tried in
unorganized
districts.

11. The like fees shall be paid out of the Consolidated Revenue Fund to witnesses attending a sitting of any Court held in any unorganized district, upon the prosecution or trial of an indictable offence, and shall be so paid under such regulations as the Lieutenant-Governor in Council may prescribe. 10 Edw. VII. c. 42, s. 11.

On recovery
from prosecu-
tor or defend-
ant, the muni-
cipality to be
repaid.

12. Where witness fees paid under the provisions of this Act are, by virtue of the judgment of the Court, afterwards recovered from the prosecutor or defendant, the same shall be repaid to the municipality, and one-third accounted for by the municipality to the Crown. 10 Edw. VII. c. 42, s. 12.

Fee to Crown
Attorney in
respect of
certificate.

13.—(1) The Crown Attorney shall be entitled to receive from the corporation of the county in which the Court is held a fee of \$1, in respect of every prosecution or trial on

which a witness is examined, which sum shall be over and above his other costs and charges and shall cover the costs, charges and expenses of and incidental to the certificate, or the inquiry whether a certificate should be granted.

(2) One-third of such fee shall be repaid to the corporation out of the Consolidated Revenue Fund. 10 Edw. VII. c. 42, s. 13. Reimbursement.

14. In the case of an information, action, or other legal proceeding by or on behalf of the Crown, for the prosecution of rights, claims or demands of His Majesty against any person for the use of Ontario, or for the recovery of the possession of any land, deeds or personal property whereto His Majesty claims to be entitled for the use of Ontario, the witnesses shall be entitled to be paid the like witness fees as are payable in actions between subject and subject. 10 Edw. VII. c. 42, s. 14. Witness fees payable on prosecution of claims, etc., by His Majesty.

15. Nothing herein shall entitle a witness to require payment of any sum previous to the determination by adjournment or otherwise at the Court of the prosecution or trial at which he attends as a witness. 10 Edw. VII. c. 42, s. 15. Compensation not payable before determination of the case.

CHAPTER 98.

An Act respecting Estreats.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Estreats Act*. 10 Edw. VII. c. 43, s. 1.

Entry of fines, etc., within 21 days from adjournment of Court. **2.**—(1) Unless otherwise provided all fines, issues, amerciaments and forfeited recognizances, the disposal of which is within the power of the Province, set, imposed, lost or forfeited, by or before the High Court Division or a Court of General Sessions of the Peace, shall, within twenty-one days from the adjournment of such Court, be entered and extracted on a roll, by the Deputy Clerk of the Crown or Clerk of Assize, or Clerk of the Peace, as the case may be, or by some other person under the direction of a Judge, which roll shall be made in duplicate and signed by the Clerk or by the Judge.

Affidavit by Clerk. (2) The Clerk or other person by whom the rolls are prepared shall, at the foot thereof, make affidavit in the following form:

Form. “**I, A. B., (describing his office), make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, and forfeited recognizances, which were set, imposed, lost or forfeited, at or by the Court therein mentioned, and which in right and due course of law ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in such roll; and that in the roll are also contained and expressed all such fines as have been paid to or received by me, either in Court or otherwise, without any wilful discharge, omission, misnomer, or defect whatever: So help me God.**” **A. B.**

Sworn, etc.

10 Edw. VII. c. 43, s. 2.

Transmission of copy of roll to Central Office or Clerk of the Peace. **3.**—(1) Subject to the provisions of section 8 as soon as the rolls are prepared one shall in the High Court Division be transmitted by the Clerk, or by the Judge to the Central Office at Toronto, and in the General Sessions shall remain deposited in the office of the Clerk of the Peace, and in both cases the other with a writ of execution and *capias*, Form A, shall be transmitted to the sheriff of the county or district in and for which such Court was held.

Execution.

Idem. (2) Where the writ is intended to be executed in any other county or district a certified copy of the roll, with a con-

current writ of execution and *capias*, Form A, shall be transmitted to the Sheriff of such county or district.

(3) A writ, if unexecuted, shall remain in force for three years and no longer, unless renewed in the manner provided in the case of other writs of execution. Duration of writ.

(4) Where a recognizance is estreated, and has not been discharged or satisfied, the Court or a Judge may order the issue of a new or alias writ of execution and *capias*, notwithstanding that more than three years may have elapsed since the issue of the original writ. 10 Edw. VII. c. 43, s. 3. Alias.

4. The sheriff shall proceed to the immediate levying and recovering of such fines, issues, amerciaments and forfeited recognizances, on the goods and chattels, lands and tenements of the persons named in the roll, or for taking into custody the bodies of such persons in case sufficient goods and chattels, lands or tenements cannot be found whereof the sums required can be made; and every person so taken shall be lodged in the Common Gaol of the county or district until satisfaction is made or until the Court, upon cause shown by the party as hereinafter mentioned, makes an order in the case, and until the order has been fully complied with. 10 Edw. VII. c. 43, s. 4. Mode of proceeding to levy fine, etc.

5.—(1) Where a person bound by a recognizance for his appearance, or for whose appearance any other person has become so bound, does not appear at the time and place required or during the time the Judge of the County or District Judge's Criminal Court or police magistrate or justice of the peace has appointed, according to the terms of the recognizance, the Judge or police magistrate or justice shall within forty-eight hours after such failure to appear cause a record of the recognizance to be drawn up and shall sign the same and return it to the clerk of the peace for the county or district with a certificate on the back thereof signed by the Judge, police magistrate or justice stating that the person charged has not complied with the obligation contained in the recognizance. Estreat of recognizances to County Court Judges. Criminal Court and Magistrates.

(2) The Clerk of the Peace shall make a like record of estreat of every such recognizance as in the case of other recognizances forfeited at the Court of General Sessions of the Peace. Record of estreats at Sessions.

(3) The other provisions of this Act shall apply to every such recognizance. 10 Edw. VII. c. 43, s. 5. Application of the provisions.

6. Where a person bound by recognizance for his appearance, or for whose appearance any other person has become so bound, to prosecute or give evidence in the case of an offence for the commission of which a fine or penalty is imposed which the Province is entitled to receive makes default, the officer of the Court by whom the estreats are Report by officer of the Court.

made out shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which such person or his surety was so bound, together with the residence, trade, profession, or calling of every such person and surety, and shall in the list distinguish the principals from the sureties, and shall state the cause, if known, why each such person did not appear, and whether, by reason of his non-appearance, the ends of justice have been defeated or delayed. 10 Edw. VII. c. 43, s. 6.

Estreat of
recognizances,
etc.

7. Every officer before a recognizance is estreated shall lay the list before a Judge of the Court, who shall examine the list and make such order touching the estreating or putting in process the recognizance as appears just; and no officer of the Court shall estreat or put in process a recognizance without the written order of the Judge before whom the list has been laid. 10 Edw. VII. c. 43, s. 7.

Judge's order.

Forbearance
from estreat
under certain
circumstances.

8.—(1) Except in the cases of persons bound by recognizance for their appearance, or for whose appearance any other person has become so bound, to prosecute or give evidence, in every case of default whereby a recognizance has become forfeited, if the cause of absence is made known to the Court, the Court, on consideration of the cause, and considering also whether by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated; and with respect to all recognizances estreated and all fines imposed by any Court for the non-attendance of a juror or constable, or of a public officer bound to attend at the Court, if it appears to the satisfaction of the Judge who presided thereat, that the absence of the person for whose appearance a recognizance was entered into, or that the absence of a person fined for non-attendance was owing to circumstances which rendered his absence justifiable, the Judge may make an order directing that the sum forfeited upon the estreated recognizance or the fine imposed shall not be levied.

Forbearance
from levying
fines, etc.,
under certain
circumstances.

(2) The clerk before sending to the sheriff the roll, with the writ of execution and *capias*, shall submit the same to the Judge for his revision; and the Judge may make a minute on the roll and writ of any forfeited recognizances and fines which he thinks fit to direct not to be levied; and the sheriff shall observe the direction in the minute, and shall accordingly forbear to levy the forfeited recognizance or fine. 10 Edw. VII. c. 43, s. 8.

Procedure
where lands
are seized.

9. Where the sheriff takes land or tenements in execution his duties and the practice and procedure as to the sale shall be the same as in other cases of execution against lands. 10 Edw. VII. c. 43, s. 9.

10. If a person on whose goods and chattels a sheriff is authorized to levy a forfeited recognizance gives security to the sheriff for his appearance in the Court into which the writ is returnable within thirty days after the giving of the security, or so soon thereafter as the Court shall sit, then and there to abide the decision of the Court, and also to pay the forfeited recognizance or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as may be adjudged and ordered by the Court, such person shall be discharged out of custody; and if he does not appear in pursuance of his undertaking the Court may forthwith issue a writ of execution and *capias* against the surety or sureties of the person so bound. 10 Edw. VII. c. 43, s. 10.

Conditions upon which a party in custody of the Sheriff may be released.

11. The Court, into which a writ of execution and *capias* is returnable, may inquire into the circumstances of the case and may order the discharge of the whole of the forfeited recognizance, or sum paid or to be paid in lieu of satisfaction thereof, and may make such order thereon as to the Court appears just; and the order shall be a discharge to the sheriff or to the party, according to the circumstances of the case. 10 Edw. VII. c. 43, s. 11.

Discharge of forfeited recognizances, etc., under certain circumstances.

12. The sheriff to whom a writ is directed shall with his return state on the back of the roll attached to the writ what has been done in the execution thereof; and the return shall be filed in the proper office of the Court into which it is made. 10 Edw. VII. c. 43, s. 12.

Manner of return by Sheriff, etc.

13. A copy of the roll and return, certified by the clerk of the peace or by one of the Registrars of the High Court Division, shall be forthwith transmitted to the Treasurer of Ontario and to the Inspector of Legal Offices, with a minute thereon of any of the sums therein mentioned which have been remitted by order of the Court, in whole or in part, or directed to be forborne under the authority of this Act. 10 Edw. VII. c. 43, s. 13.

Certified return to Provincial Treasurer.

14. The sheriff shall, without delay, pay over all money by him collected to the Treasurer of Ontario or other officer or person entitled to receive the same. 10 Edw. VII. c. 43, s. 14.

Payment to Provincial Treasurer or person entitled.

15. The Judges of the Supreme Court authorized to make rules for regulating the practice of the Court, may make rules regulating the practice and procedure for the estreating of recognizances in the High Court Division or in the Court of General Sessions of the Peace. 10 Edw. VII. c. 43, s. 15.

Rules.

FORM A.

WRIT OF EXECUTION AND CAPIAS.

Section 3 (1).

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King; Emperor of India, Defender of the Faith, etc.

To the Sheriff of _____, Greeting:

You are hereby commanded to levy of the goods and chattels, lands and tenements of each of the persons mentioned in the roll or extract to this Writ annexed, all and singular the debts and sums of money upon them severally imposed and charged as therein is specified; and if any of the said several debts cannot be levied, by reason that no goods or chattels, lands or tenements can be found belonging to the said persons respectively, then, and in all such cases, that you take the bodies of such persons and keep them safely in the Gaol of your County (*or District*), there to abide the judgment of Our High Court Division (*or Court of General Sessions of the Peace, as the case may be*) upon any matter to be shown by them respectively, or otherwise to remain in your custody as aforesaid until such debt is satisfied, unless any of such persons respectively gives sufficient security for his appearance at the said Court within thirty days after the giving of the security, or so soon thereafter as the Court shall sit, for which you will be held answerable; and what you do in the premises make appear before Us in Our High Court Division at Toronto, (*or at the next Court of General Sessions of the Peace for the county (or district) of, (as the case may be), immediately after the execution hereof and have then and there this Writ.*

Witness
of _____ 19 . this . . day

A. B.,

Deputy Clerk of the Crown (*or Clerk of the Peace or as the case may be*) for the County of _____

CHAPTER 99.

An Act respecting Fines, Penalties and Forfeitures.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Fines and Forfeitures Act*. Short title.

2.—(1) Where a pecuniary fine, penalty or forfeiture is imposed for a contravention of an Act of this Legislature, and no other provision is made for the recovery thereof, the fine, penalty or forfeiture shall be recoverable with costs by a civil action at the suit of the Crown or of any person suing as well for the Crown as for himself before any Court of competent jurisdiction upon the evidence of one credible witness other than the person interested. Recovery of penalties by action.

(2) If no other provision is made and the recovery is at the suit of the Crown the fine, penalty or forfeiture shall belong to the Crown, and if at the suit of a private party then one-half shall belong to him and the other half shall belong to the Crown. 7 Edw. VII. c. 26, s. 1. Application of penalty.

(3) Where a fine, penalty or forfeiture belongs to the Crown, the Lieutenant-Governor in Council may allow any part thereof to any person by whose information or aid the fine, penalty or forfeiture was recovered. 9 Edw. VII. c. 26, s. 3 (1). Allowing part of penalty to informant.

3. Where the amount of the fine, penalty or forfeiture is in the discretion of the Court or Judge or in case the Court or Judge has power to impose imprisonment in addition to or in lieu of the fine, penalty or forfeiture, and no other mode of recovery is prescribed, the penalty or forfeiture may be recovered upon indictment in the High Court Division or General Sessions of the Peace. 7 Edw. VII. c. 26, s. 2. Recovery of penalties by indictment.

4. Where, by an Imperial Statute in force in Ontario, a pecuniary fine, penalty or forfeiture is imposed in respect of a matter within the legislative authority of this Legislature and the whole or part of the fine, penalty or forfeiture is in any manner appropriated for the support of the poor or to any parochial or other purpose inapplicable to Ontario, the fine, penalty or forfeiture or the part thereof so appropriated shall belong to the county, or city or town Application of penalties imposed under certain Imperial Acts.

separated from the county, in which the conviction has taken place, and in case a conviction has taken place in some part of Ontario without county organization then the fine, penalty or forfeiture shall belong to the Crown. 7 Edw. VII. c. 26, s. 3.

To whom fines,
etc., to be paid.

5. Every pecuniary fine and penalty imposed for a contravention of any Statute in force in Ontario and the proceeds of every forfeiture imposed and given to the Crown by any such Statute shall, where the disposal thereof is within the power of this Legislature, and except so far as other provision is made in respect thereto, be paid to the Treasurer of Ontario and shall form part of the Consolidated Revenue Fund. 7 Edw. VII. c. 26, s. 4.

Remission of
penalty by
court or judge.

6.—(1) Where a pecuniary fine, penalty or forfeiture is imposed by or under the authority of any Act of this Legislature the court or judge having cognizance of the proceedings for the recovery thereof may at any time after the commencement thereof remit in whole or in part such fine, penalty or forfeiture whether the money is in whole or in part payable to the Crown or to some person other than the Crown and whether the same is recoverable by indictment, information, summary process, action or otherwise. 7 Edw. VII. c. 26, s. 5 (1); 9 Edw. VII. c. 26, s. 3 (2).

Authority not
extended to
justices of the
peace.

(2) This section shall not be held to give to a police magistrate or justice of the peace the authority herein mentioned. 7 Edw. VII. c. 26, s. 5 (2).

Remission by
Lieutenant-
Governor in
Council.

Rev. Stat. c. 11.

7.—(1) The Lieutenant-Governor in Council may at any time remit any fine, penalty or forfeiture mentioned in the next preceding section in whole or in part unless the same is imposed by *The Legislative Assembly Act*, or by some Act, respecting the election of members to the Assembly or is recoverable in respect of any offence committed in connection with any such election. 7 Edw. VII. c. 26, s. 6.

Relief against
civil conse-
quences of
conviction.

(2) Where a fine, penalty or forfeiture is remitted, the Lieutenant-Governor in Council may also relieve the offender from any other penalty or forfeiture consequent upon his conviction. 9 Edw. VII. c. 26, s. 3 (3).

Costs not to
be remitted.

8. Nothing herein contained shall authorize the remitting of costs incurred up to the time of remitting the penalty or forfeiture. 7 Edw. VII. c. 26, s. 7.

7. ADMINISTRATION OF JUSTICE IN THE VICINITY OF NIAGARA FALLS.

CHAPTER 100.

An Act to provide for the better Government of that part of Ontario situated in the Vicinity of the Falls of Niagara.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Niagara Falls Magistrate's* Short title.
Act. 10 Edw. VII. c. 44, s. 1.

2. The Lieutenant-Governor in Council may appoint a Appointment of Police Magistrate.
Police Magistrate for the City of Niagara Falls in the County of Welland. 10 Edw. VII. c. 44, s. 2.

3. The Police Magistrate shall be *ex-officio* a Justice of the Powers and duties of Police Magistrate.
Peace of and for the County of Lincoln, and of and for the County of Welland; and may exercise, within those counties, the jurisdiction and authority of two Justices of the Peace in relation to all matters in respect to which this Legislature has authority so to enact. 10 Edw. VII. c. 44, s. 3.

4. The Police Magistrate shall, as often as he considers Police Court at Fort Erie.
necessary, or, if the Lieutenant-Governor in Council gives a direction in that behalf, then as often as the Lieutenant-Governor in Council directs, hold a Police Court in the Village of Fort Erie. 10 Edw. VII. c. 44, s. 4.

5. Subject to the provisions of the next preceding section, When Magistrate bound to act.
the Police Magistrate shall not be bound to entertain any complaint except with reference to offences committed within the limits of the City of Niagara Falls or of the Township of Stamford; and he shall, as far as practicable, give precedence to complaints in which persons residing at a distance are concerned, either as parties or as witnesses, over complaints in which only persons residing in the neighbourhood of the City of Niagara Falls are so concerned. 10 Edw. VII. c. 44, s. 5.

6. In addition to any other penalty imposed by any statute Power of revocation of licenses.
or by any by-law of the municipality, as a punishment for any

offence, the Police Magistrate shall have authority to order the revocation or the suspension for such period as he may consider just, of any license granted or issued by the municipal officers of the City of Niagara Falls or of the Township of Stamford, or of the Village of Fort Erie, or of the Township of Bertie, to the person convicted. 10 Edw. VII. c. 44, s. 6.

Accounts of
fines, etc.

7.—(1) The Police Magistrate shall keep proper accounts of all fines, penalties and costs imposed in the Police Courts of the City of Niagara Falls and of the Village of Fort Erie, or elsewhere imposed by him.

Disposition of
fines, etc.
Rev. Stat.
c. 215.

(2) Such fines, penalties and costs, other than those arising from prosecutions under *The Liquor License Act*, if the same were imposed in the Police Court at the City of Niagara Falls, shall be paid over by him to the Treasurer of the City of Niagara Falls for the uses of the city, at such periods as such Treasurer and Police Magistrate may agree upon, or in default of agreement at such periods as may be fixed by the city council; and in other cases shall forthwith, or at such period as the Treasurer of Ontario shall direct, be paid over by the Police Magistrate to the Treasurer of Ontario, and shall form part of The Consolidated Revenue Fund.

Fines under
Rev. Stat.
c. 215

(3) All fines from prosecutions under *The Liquor License Act*, shall form part of the license fund of the district, to be dealt with as provided by that Act. 10 Edw. VII. c. 44, s. 7.

SECTION VIII.

LAW OF PROPERTY.

1. LAW OF PROPERTY IN GENERAL.

CHAPTER 101.

An Act respecting the application of the Law of
England in certain matters.

HIS MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Ontario,
enacts as follows:—

1. This Act may be cited as *The Property and Civil Rights* Short title.
Act. 10 Edw. VII. c. 45, s. 1.

2.—(1) In all matters of controversy, relative to property Rule of
and civil rights, resort shall be had to the laws of England as decision.
they stood on the 15th day of October, 1792, as the rule for
the decision of the same; and all matters relative to testimony
and legal proof in the investigation of fact and the forms
thereof in the Courts of Ontario shall be regulated by the
rules of evidence established in England, as they existed on
that day, except so far as such laws and rules have been since
repealed, altered, varied, modified or affected by any Act of
the Imperial Parliament, still having the force of law in
Ontario, or by any Act of the late Province of Upper Canada,
or of the Province of Canada, or of the Province of Ontario,
still having the force of law in Ontario.

(2) Nothing in this section shall extend to any of the laws Saving.
of England respecting the maintenance of the poor. 10 Edw.
VII. c. 45, s. 2.

CHAPTER 102.

An Act for the Prevention of Frauds and Perjuries.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Statute of Frauds*.
3-4 Geo. V. c. 27, s. 1.

Writing required to create certain estates or interests.

Effect if not in writing.

2.—(1) Every estate or interest of freehold and every uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments shall be made or created by writing signed by the parties making or creating the same, or their agents thereunto lawfully authorized in writing, and if not so made or created shall have the force and effect of an estate at will only, and shall not be deemed or taken to have any other or greater force or effect.

Leases to be made by deed.

(2) All leases and terms of years of any messuages, lands, tenements or hereditaments shall be void at law unless made by deed. 3-4 Geo. V. c. 27, s. 2.

No leases, or estates of freehold, etc., to be granted or surrendered but by writing signed.
R.S.O. c. 109.

3. Subject to section 9 of *The Conveyancing and Law of Property Act* no lease, estate or interest, either of freehold or term of years, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments shall be assigned, granted or surrendered unless it be by deed or note in writing signed by the party so assigning, granting, or surrendering the same, or his agent thereunto lawfully authorized by writing or by act or operation of law. 3-4 Geo. V. c. 27, s. 3.

Except leases not exceeding three years, etc.

4. Sections 2 and 3 shall not apply to a lease, or an agreement for a lease, not exceeding the term of three years from the making thereof, the rent upon which, reserved to the landlord during such term, amounts unto two thirds at the least of the full improved value of the thing demised. 3-4 Geo. V. c. 27, s. 4.

Writing required for certain contracts. Executor personally.

5. No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge any person upon any special promise to answer for the debt, default

or miscarriage of any other person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized. 3-4 Geo. V. c. 27, s. 5.

Guaranty
Consideration
of marriage.
Sale of
land.
Performance
not within
year.

6. No special promise made by any person to answer for the debt, default or miscarriage of another person, being in writing and signed by the party to be charged therewith, or by some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action or other proceeding to charge the person by whom the promise was made by reason only that the consideration for the promise does not appear in writing, or by necessary inference from a written document. 3-4 Geo. V. c. 27, s. 6.

Considera-
tion for
promise to
answer for
another
need not
be in
writing.

7. No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless the promise or ratification is made by some writing signed by the party to be charged therewith or by his agent duly authorized to make the promise or ratification. 3-4 Geo. V. c. 27, s. 7.

As to rati-
fication of
promise
made dur-
ing non-
age.

8. No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain money, goods or credit thereupon, unless the representation or assurance is made in writing signed by the party to be charged therewith. 3-4 Geo. V. c. 27, s. 8.

As to repre-
sentation
regarding
the charac-
ter, credit,
etc., of a
third party.

9. Subject to section 10 all declarations or creations of trusts or confidences of any lands, tenements or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect. 3-4 Geo. V. c. 27, s. 9.

Declara-
tions or
creations
of trusts
of land to
be in writ-
ing signed.

10. Where any conveyance is made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law, or be transferred or extinguished by act or operation of law, then and in every such case such trust or confidence shall be of the like force and effect as the same would have been if this Act had not been passed. 3-4 Geo. V. c. 27, s. 10.

Exception of
trusts aris-
ing, trans-
ferred, or
extinguish-
ed by im-
plication of
law.

Assignments of trusts shall be in writing.

11. All grants and assignments of any trust or confidence shall likewise be in writing signed by the party granting or assigning the same, or by such last will or devise, or else shall likewise be utterly void and of none effect. 3-4 Geo. V. c. 27, s. 11.

In what cases only contracts for sales of goods for \$40 or more to be binding.

12. No contract for the sale of any goods, wares or merchandise, for the price of \$40 or upwards, shall be allowed to be good unless the buyer shall accept part of the goods so sold and actually receive the same, or give something in earnest to bind the bargain or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto lawfully authorized, and notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of the contract be actually made, procured or provided, or fit or ready for delivery, or although some act may be requisite for the making or completing thereof or rendering the same fit for delivery. 3-4 Geo. V. c. 27, s. 12.

CHAPTER 103.

An Act respecting Mortmain and the disposition of Land for Charitable Uses.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Mortmain and Charitable Uses Act*. 9 Edw. VII. c. 58, s. 1. Short title.

2.—(1) In this Act, Interpretation.

- (a) "Assurance" shall include a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest and every other assurance by deed, will or other instrument; and "Assure" and "Assuror" shall have meanings corresponding with assurance;
- (b) "Will" shall include codicil; "Will."
- (c) "Land" shall include tenements and hereditaments corporeal and incorporeal of whatever tenure, but not money secured on land, or other personal estate arising from or connected with land; "Land."
- (d) "Full and valuable consideration" shall include such a consideration either actually paid upon or before the making of the assurance, or reserved or made payable to the vendor or any other person by way of rent, rent charge, or other annual payment, in perpetuity, or for any term of years, or other period, with or without a right of re-entry for non-payment thereof, or partly paid and partly reserved, as aforesaid. "Full and valuable consideration." Imp. Acts 51 52 Vict. c. 42, s. 10; and 54-55 Vict. c. 73, s. 3.

(2) The following shall be deemed to be charitable uses within the meaning of this Act: Charitable uses. Imp. Act, 48 Eliz. c. 4, s. 1.

- (a) The relief of poverty;
- (b) Education;
- (c) The advancement of religion; and
- (d) Any purpose beneficial to the community, not falling under the foregoing heads. 9 Edw. VII. c. 58, s. 2.

PART I.

MORTMAIN.

General
prohibition
against
mortmain.

3. Land shall not be assured to or for the benefit of, or acquired by or on behalf of any corporation in mortmain, otherwise than under the authority of a license from His Majesty, or of a statute for the time being in force, and if any land is so assured, otherwise than as aforesaid, the land shall be forfeited to His Majesty from the date of the assurance, and His Majesty may enter on and hold the land accordingly. 9 Edw. VII. c. 58, s. 3.

Forfeiture.
Imp. Act 51-
52 Vict. c. 42,
s. 1.

Power to
grant licenses
in mortmain.

4. The Lieutenant-Governor in Council, if and when, and in such form as he thinks fit, may grant to any person or corporation a license to assure land in mortmain in perpetuity or otherwise, and may grant to any corporation a license to acquire land in mortmain, and to hold such land in perpetuity or otherwise. 9 Edw. VII. c. 58, s. 4.

Imp. Act 51-
52 Vict. c. 42,
s. 2.

Saving for
rents and
services.

5. No entry or holding by, or forfeiture to His Majesty, under this Part, shall merge or extinguish or otherwise affect any rent or service which may be due in respect of any land to His Majesty. 9 Edw. VII. c. 58, s. 5.

Imp. Act 51-
52 Vict. c. 42,
s. 3.

PART II.

CHARITABLE USES.

Conditions
under which
assurances
may be made
to charitable
uses.

6. Save as herein otherwise provided, every assurance, other than by will, of land or personal estate to be laid out in the purchase of land to or for the benefit of any charitable use shall be void unless made

- (a) To take effect in immediate possession for such charitable use,
- (b) Without any power of revocation, reservation, condition or provision for the benefit of the assurator or of any person claiming under him, and
- (c) At least six months before the death of the assurator, and if of stock in the public funds by transfer thereof in the public books kept for the transfer of stock at least six months before such death;

Proviso.

Provided that the assurance or any instrument forming part of the same transaction may contain all or any of the following conditions, so however that they reserve the same benefits to persons claiming under the assurator as to the assurator himself, namely;

- (i) The grant or reservation of a peppercorn or other nominal rent,

- (ii) The grant or reservation of mines or minerals.
- (iii) The grant or reservation of any easement,
- (iv) Covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, or as to drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land,
- (v) A right of entry on non-payment of any such rent or on breach of any such covenant or provision, or
- (vi) Any stipulations of the like nature for the benefit of the assurator or of any person claiming under him; and

Provided that nothing in this section contained shall apply to or affect any such assurance made for full and valuable consideration. 9 Edw. VII. c. 58, s. 6. Proviso. f

7.—(1) Subject to the provisions hereinafter contained where land is assured otherwise than by will to or for the benefit of any charitable use the same shall notwithstanding anything contained in the deed or other instrument of assurance be sold within two years from the date of the assurance or within such extended period as may be determined by the Supreme Court or a Judge thereof. Necessity for sale.

(2) If the land is not sold within the two years or within such extended period it shall vest forthwith in the Accountant of the Supreme Court and subsection 2 of section 10 shall apply thereto. Idem.

(3) The Supreme Court or a Judge thereof, if satisfied that the land so assured is required for actual occupation for the purposes of the charity and not as an investment, may by order sanction the retention of such land. 9 Edw. VII. c. 58, s. 7. When sanctioned.

PART III.

EXEMPTIONS.

8.—(1) In this section, Definitions.

- (a) "Public park" shall include any park, garden, or other land dedicated or to be dedicated to the recreation of the public; "Park."
- (b) "School" shall mean a school, or department of a school, at which education is given in literature, art, science or mathematics; "School."

"School-house."

- (c) "School house" shall include the teacher's dwelling house, the playground, if any, and the offices and premises belonging to or required for a school;

"Public museum."

- (d) "Public museum" shall include buildings used, or to be used, for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical, scientific or philosophical inventions, instruments, models or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories and other offices and premises used or to be used in connection therewith.

Imp. Act,
51-52 V. c. 42,
s. 6.

Assurances
for a public
park, school,
or museum.

- (2) Notwithstanding anything in this Act, land, or personal estate to be laid out in the purchase of land, may be assured for the following purposes, viz.:

- (a) For a public park.
- (b) For a public museum.
- (c) For a public library.
- (d) For a school or school house.

Sale of land
assured for
school if not
required for
actual use.

- (3) Land assured for the purposes of a school or school house and not required for actual use and occupation for such purposes or the part thereof not so required shall be sold within two years from the date of the assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by the Supreme Court or a Judge thereof, and the provisions of subsection 2 of section 10 and of sections 12 and 13 shall apply. 9 Edw. VII. c. 58, s. 8.

Assurances
for certain
universities,
colleges.

9. Sections 3 and 6. shall not apply to the following assurances:—

- (a) An assurance of land or personal estate to be laid out in the purchase of land, to or in trust for any incorporated university, college or school in Ontario, or for the support and maintenance of the students thereat.
- (b) An assurance, otherwise than by will, to trustees on behalf of any society or body of persons, incorporated or unincorporated, associated together for religious purposes, or for the promotion of education, art, literature, science or other like purposes, of land not exceeding two acres, for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected. 9 Edw. VII. c. 58, s. 9.

Imp. Act,
51-52 V. c. 42,
s. 7.

PART IV.

LAND DEVISED BY WILL.

10.—(1) Land may be devised by will to or for the benefit of any charitable use, but, except in the cases provided for by sections 8 and 9 and except as herein otherwise provided, shall, notwithstanding anything in the will contained to the contrary, be sold within two years from the death of the testator, or such extended period as may be determined by the Supreme Court or a Judge thereof.

Power to devise land for charitable use.

Necessity for sale.

(2) So soon as the two years or such extended period shall have expired without the completion of the sale of the land, the land shall vest forthwith in the Accountant of the Supreme Court; and the Supreme Court shall cause the same to be sold, or the sale completed, as the case may be, with all reasonable speed by the administering trustees thereof for the time being; and for this purpose may make orders directing such trustees to proceed with the sale or completion of the sale of such land, or removing such trustees and appointing others, and may provide by any such order or otherwise for the payment of the proceeds of the sale to the trustees in trust for the charity, and for the payment of the costs and expenses incurred by them or otherwise in or connected with such sale and proceedings. 9 Edw. VII. c. 58, s. 10.

Where land remains unsold after expiration of two years.

11. Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable use, shall, except as hereinafter provided, be held to or for the benefit of the charitable use as though there had been no direction to lay it out in the purchase of land. 9 Edw. VII. c. 58, s. 11.

Personal estate directed to be laid out in land.

12. The Supreme Court, or a Judge thereof, if satisfied that land devised by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity, and not as an investment, may, by order, sanction the retention or acquisition, as the case may be, of such land. 9 Edw. VII. c. 58, s. 12.

Power to retain land in certain cases.

13. The jurisdiction of the Supreme Court under this Act may be exercised by a Judge in Chambers or otherwise, and in a summary manner so as to avoid all unnecessary expense. 9 Edw. VII. c. 58, s. 13.

Exercise of jurisdiction of Court.

PART V.

GIFTS AND BEQUESTS TO CERTAIN PUBLIC BODIES.

14.—(1) The Government of Ontario, a municipal corporation, a school board, a public library board or association, a public hospital board and trustees empowered to administer or hold property for charitable uses may have,

Power of certain public bodies to accept gifts to charitable uses.

take, hold and enjoy by gift, grant, devise, conveyance or bequest real or personal property of any nature or kind and wherever situate, whether within or without Ontario, or the proceeds thereof upon the terms expressed in the gift, grant, devise, bequest or conveyance whereby the same is given, granted, devised, bequeathed or conveyed to such body.

Agreement
with donor
as to admin-
istration.

(2) Any such body may, subject always to the provisions of the Act or under the authority of which it exists and to any law regulating or limiting its power to contract debts, enter into an agreement for the holding, management, administration or disposition of any such property with the person giving, granting, conveying, devising or bequeathing the same to such public body upon such terms as may be agreed upon between the parties to any such gift, grant, devise, bequest or conveyance.

Necessity for
sale within
two years.

(3) Land so given, granted, devised, bequeathed or conveyed and not required for actual use and occupation for the purposes of the trust upon which it was given, granted, devised, conveyed or assured to such public body shall be sold within two years from the date of the gift, grant, devise, conveyance or assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by the Supreme Court or a Judge thereof, and the provisions of subsection 2 of section 10 and of sections 12 and 13 shall apply.

Retroactive
effect of
section.

(4) This section shall apply to gifts, grants, devises, bequests and conveyances heretofore made as well as to such as may hereafter be made. 9 Edw. VII. c. 58, s. 14.

PART VI.

SUPPLEMENTAL.

Procedure
in cases of
breach of a
charitable
trust, etc., or
where order
necessary for
administra-
tion.

15.—(1) In every case of a breach or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court shall be deemed necessary for the administration of any trust for charitable purposes, any two or more persons may present a petition to the Supreme Court stating such complaint and praying such relief as the nature of the case may require, and the Court may hear such petition in a summary way, and upon such affidavits, or such other evidence as shall be produced upon such hearing, may determine the same, and make such order therein, and with respect to the costs of such application, as shall seem just; and any order so made shall be subject to appeal as if made in an action.

Execution of
petition
and certificate
by Attorney-
General.
Imp. 52
Geo. 3.
c. 101, s. 1.

(2) Every such petition shall be signed by the persons preferring the same in the presence of and shall be attested by their solicitor, and shall be submitted to and may be allowed by the Attorney-General, and such allowance shall be certified by him before any such petition shall be presented. 9 Edw. VII. c. 58, s. 16.

16. Nothing in this Act shall apply so as to limit or restrict the right possessed by any corporation under any other Act, or affect any charter or license in force at the passing of this Act enabling land to be assured or held in mortmain.
9 Edw. VII. c. 58, s. 15.

CHAPTER 104.

An Act respecting Escheats and Forfeitures.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Escheats Act*. 9 Edw. VII. c. 57, s. 1.

Proceedings by Attorney-General for recovery of escheated or forfeited lands.

2.—(1) Where land has escheated to the Crown by reason of the person last seised thereof or entitled thereto having died intestate and without lawful heirs, or has become forfeited for any cause to the Crown, the Attorney-General may cause possession thereof to be taken in the name of the Crown; or if possession is withheld may cause an action to be brought for the recovery thereof, without an inquisition being first made.

Practice.

(2) The proceedings in the action may be in all respects similar to those in other actions for the recovery of land. 9 Edw. VII. c. 57, s. 2.

Grant of escheated or forfeited land in recognition of moral claim.

3. The Lieutenant-Governor in Council may grant any land which has heretofore so escheated or becomes so forfeited or which hereafter so escheats or becomes so forfeited, or any part thereof, or any interest therein, to any person for the purpose of transferring or restoring the same to any person having a legal or moral claim upon the person to whom the same had belonged, or of carrying into effect any disposition thereof which such person may have contemplated, or of rewarding any person making discovery of the escheat or forfeiture, as to the Lieutenant-Governor in Council may seem meet. 9 Edw. VII. c. 57, s. 3.

Or of deceased's intention.

Or reward to informant.

Rights of grantee.

4. Any such grant may be made without actual entry or inquisition being first made; and, if possession of the land is withheld, the person to whom the grant is made may institute, in any court of competent jurisdiction, proceedings for the recovery thereof. 9 Edw. VII. c. 57, s. 4.

Release or waiver of forfeiture.

5. Where any such forfeiture takes place the Lieutenant-Governor in Council may waive or release any right to which the Crown may thereby have become entitled, so as to vest the land, either absolutely or otherwise, in the person who would have been entitled thereto but for the forfeiture; and the waiver or release may be either for valuable consideration or

otherwise, and may be upon such terms and conditions as to the Lieutenant-Governor in Council may seem meet. 9 Edw. VII. c. 57, s. 5.

6. The Lieutenant-Governor in Council may grant any personal property to which the Crown is entitled by reason of the person last entitled thereto having died intestate and without leaving any kin or other person entitled to succeed thereto, or by reason of the same having become forfeited for any cause to the Crown or may grant any part of such personal property for any of the purposes mentioned in section 3. 9 Edw. VII. c. 57, s. 6.

Similar powers as to personalty to which the Crown has become entitled.

(See also section 9 of *The Crown Administration of Estates Act*, *Rev. Stat. c. 73*.)

CHAPTER 105.

An Act respecting Voluntary and Fraudulent Conveyances.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Fraudulent Conveyances Act*. 1 Geo. V. c. 24, s. 1.

INTERPRETATION.

Interpretation.

2. In this Act,

"Conveyances."

(a) "Conveyance" shall include gift, grant, alienation, bargain, charge, incumbrance, limitation of use or uses of, in, to or out of real property or personal property by writing or otherwise.

"Personal property."

(b) "Personal Property" shall include goods, chattels, effects, bills, bonds, notes and securities, and shares, dividends, premiums and bonuses in any bank, company or corporation, and any interest therein.

"Real property."

(c) "Real Property" shall include lands, tenements, hereditaments, and any estate or interest therein. 1 Geo. V. c. 24, s. 2.

CONVEYANCES IN FRAUD OF CREDITORS.

When conveyances declared void as against creditors. 13 Eliz., c. 5, s. 1.

3. Every conveyance of real property or personal property and every bond, suit, judgment and execution at any time had or made or at any time hereafter to be had or made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures shall be null and void as against such persons and their assigns. 1 Geo. V. c. 24, s. 3.

Saving as to conveyances by tenants in tail. 13 Eliz., c. 5, s. 3.

4. Where a conveyance made by a tenant in tail is impeached under section 3, it shall nevertheless be as valid as against the heirs in tail and all persons entitled in reversion or remainder as if this Act had not been passed. 1 Geo. V. c. 24, s. 4.

5. Section 3 shall not extend to any estate or interest in real property or personal property conveyed upon good consideration and *bona fide* to any person not having at the time of the conveyance to him notice or knowledge of such intent. 1 Geo. V. c. 24, s. 5.

Saving as to conveyances made *bona fide* and for good consideration. 13 Eliz. c. 5, s. 5.

6.—(1) Section 3 shall apply to all conveyances executed with the intent in that section set forth notwithstanding that the same may be executed upon a valuable consideration and with the intention, as between the parties to the same, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless the same is protected under section 5 by reason of *bona fides* and want of notice or knowledge on the part of the purchaser.

How far valuable consideration and intent to pass interest to avail.

(2) This section shall not apply to any instrument executed before the 2nd day of March, 1872. 1 Geo. V. c. 24, s. 6.

Saving.

CONVEYANCES IN FRAUD OF PURCHASERS.

7. Every conveyance of real property had or made or at any time hereafter to be had or made with intent to defraud and deceive such person as may have purchased or shall afterwards purchase such real property shall be deemed only as against that person and his assigns, and all persons lawfully claiming under him, or them, who have purchased or shall hereafter purchase for money or other good consideration the same real property or any part thereof to be null and void. 1 Geo. V. c. 24, s. 7.

When fraudulent conveyances declared void as against purchasers. 27 Eliz., c. 4, s. 1.

8. Section 7 shall not extend to or be construed to impeach, defeat, make null or void any conveyance of real property made upon or for good consideration and *bona fide*. 1 Geo. V. c. 24, s. 8.

Saving as to conveyances made on good consideration. 27 Eliz., c. 4, s. 3.

9.—(1) If any person makes a conveyance of real property with any clause, provision, article, or condition of revocation, determination or alteration at his will or pleasure, and after such conveyance bargains, sells, demises, grants, conveys or charges the same or any part thereof to any person for money or other good consideration paid or given, such first conveyance not being by him revoked, made void, or altered according to the power and authority so reserved or expressed therein, then such first conveyance as touching the real property so after bargained, sold, conveyed, demised or charged against the bargainees, vendees, lessees, grantees, their heirs, successors, and their assigns and against every person lawfully claiming under them, shall be null and void.

Conveyances made revocable of lands afterwards sold for good consideration to be void against the purchaser. 27 Eliz., c. 4, s. 4.

(2) No lawful mortgage made *bona fide*, and without fraud or covin, upon good consideration shall be impeached or impaired by force of this Act, but it shall have the like force and effect as if this Act had not been passed. 1 Geo. V. c. 24, s. 9.

Saving as to mortgages.

Absence of Valuable Consideration.

Validity of
voluntary
conveyance,
etc., executed
in good faith
and duly
registered.

Mere absence
of valuable
consideration.

10. Nothing in sections 7 to 9 shall extend to a conveyance which is executed in good faith and duly registered in the proper registry office or land titles office before the execution of the conveyance to, and before the creation of any binding contract for the conveyance to any subsequent purchaser from the same grantor of the same real property or any part thereof, nor shall the same merely by reason of the absence of a valuable consideration be null and void as against such purchaser or his heirs, executors, administrators or assigns or any person claiming by, from or under any of them. 1 Geo. V. c. 24, s. 10.

Effect of
preceding
section.

11. Nothing in the next preceding section shall have the effect of making valid any instrument which is for any reason, other than or in addition to the absence of a valuable consideration, void under sections 7 to 9 or otherwise; nor have the effect of making valid any instrument as against a purchaser who had, before the 28th day of February, 1868, entered into a binding contract for or received his conveyance upon such purchase. 1 Geo. V. c. 24, s. 11.

CHAPTER 106.

An Act respecting Powers of Attorney.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Powers of Attorney Act*. Short title.
10 Edw. VII. c. 47, s. 1.

2. Where a power of attorney for the sale or management of real or personal estate, or for any other purpose, provides that the same may be exercised in the name and on the behalf of the heirs or devisees, executors or administrators of the person executing the same, or provides by any form of words that the same shall not be revoked by the death of the person executing the same, such provision shall be valid and effectual, subject to such conditions and restrictions, if any, as may be therein contained. 10 Edw. VII. c. 47, s. 2.

3.—(1) Independently of such special provision in a power of attorney, every payment made and every act done under and in pursuance of a power of attorney, or a power, whether in writing or verbal, and whether expressly or impliedly given, or an agency expressly or impliedly created, after the death of the person who gave such power or created such agency, or after he has done some act to avoid the power or agency, shall, notwithstanding such death or act, be valid as respects every person who is a party to such payment or act, to whom the fact of the death, or of the doing of such act, was not known at the time of such payment or act *bona fide* made or done, and as respects all claiming under such last mentioned person.

(2) Nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made, and the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the person making the payment. 10 Edw. VII. c. 47, s. 3; 1 Geo. V. c. 17, s. 32.

CHAPTER 107.

An Act respecting the right of Property in Swarms of Bees.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Swarms of Bees Act*.
10 Edw. VII. c. 48, s. 1.

Bees in a state of freedom to be the property of discoverer.

2. Bees living in a state of freedom shall be the property of the person discovering them, whether he is or is not the proprietor of the land on which they have established themselves.
10 Edw. VII. c. 48, s. 2.

In hives, private property.

3. Bees reared and kept in hives shall be private property.
10 Edw. VII. c. 48, s. 3.

[As to exemption from seizure under execution see *The Execution Act*, Rev. Stat. c. 80.]

Rights of owner where bees abandon their hives.

4.—(1) Where a swarm of bees leaves a hive the owner may reclaim them, so long as he can prove his right of property therein, and shall be entitled to take possession of them at any place on which the swarm settles, even if such place be on the land of another person, but the owner shall notify the proprietor of such land beforehand and compensate him for all damages.

Exception.

(2) If a swarm settles in a hive which is already occupied the owner of such swarm shall lose all right of property therein. 10 Edw. VII. c. 48, s. 4.

Unpursued swarms.

5. An unpursued swarm which lodges on any property, without settling thereon, may be secured by the first comer unless the proprietor of the land objects. 10 Edw. VII. c. 48, s. 5.

Property where owner declines to follow his bees.

6. If the owner of a swarm declines to follow the swarm, and another person undertakes the pursuit, such other person shall be substituted in the rights of the owner, and every swarm which is not followed shall become the property of the proprietor of the land on which it settles, without regard to the place from which it has come. 10 Edw. VII. c. 48, s. 6.

CHAPTER 108.

An Act respecting the Rights of Aliens in relation to Real Property.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Aliens Real Property Act*. Short title.
10 Edw. VII. c. 49, s. 1.

2. On and from the 23rd day of November, 1849, every alien shall be deemed to have had and shall hereafter have the same capacity to take by gift, conveyance, descent, devise, or otherwise, and to hold, possess, enjoy, claim, recover, convey, devise, impart and transmit real estate in Ontario as a natural born or a naturalized subject of His Majesty. Aliens to have the same powers as to real estate as subjects of His Majesty. 10 Edw. VII. c. 49, s. 2.

3. The real estate in Ontario of an alien dying intestate shall descend and be transmitted as if the same had been the real estate of a natural born or naturalized subject of His Majesty. Descent of real estate of aliens. 10 Edw. VII. c. 49, s. 3.

4. Nothing herein shall alter, impair or affect any right or title legally vested in or acquired by any person before the 23rd day of November, 1849. Proviso as to rights before 23rd November, 1849. 10 Edw. VII. c. 49, s. 4.

CHAPTER 109.

An Act respecting the Law and Transfer of
Property.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title. **1.** This Act may be cited as *The Conveyancing and Law of Property Act*. 1 Geo. V. c. 25, s. 1.
- Interpretation. **2.** In this Act,
- | | |
|---|---|
| Conveyance. | (a) “Conveyance” shall include assignment, appointment, lease, settlement, and other assurance, made by deed, on a sale, mortgage, demise, or settlement of any property or on any other dealing with or for any property; and “convey” shall have a meaning corresponding with that of conveyance; |
| Imp. Act
44-45 V.
c. 41, s. 2.
Convey. | |
| Land. | (b) “Land” shall include messuages, tenements, hereditaments, whether corporeal or incorporeal, and any undivided share in land; |
| Mortgage. | (c) “Mortgage” shall include any charge on property for securing money or money’s worth; |
| Mortgage money. | (d) “Mortgage money” shall mean money or money’s worth secured by a mortgage; |
| Mortgagee. | (e) “Mortgagee” shall include any person from time to time deriving title under the original mortgagee. |
| Mortgagor. | (f) “Mortgagor” shall include any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate, interest or right in the mortgaged property; |
| Property. | (g) “Property” shall include real and personal property, and any debt, and any thing in action, and any other right or interest; |
| Puffer. | (h) “Puffer” shall mean a person appointed to bid on the part of the seller; |
| Purchaser. | (i) “Purchaser” shall include a lessee, a mortgagee and an intending purchaser, lessee or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and “purchase” |
| Purchase. | |

shall have a corresponding meaning with that of purchaser; but "sale" shall mean only a sale ^{Sale.} properly so called. 1 Geo. V. c. 25, s. 2.

3. All corporeal tenements and hereditaments shall, as ^{Conveyance of} regards the conveyance of the immediate freehold thereof, lie ^{corporeal} in grant as well as in livery. 1 Geo. V. c. 25, s. 3.

4. A feoffment, otherwise than by deed, shall be void and ^{Form and} no feoffment shall have any tortious operation. 1 Geo. V. ^{operation of} c. 25, s. 4.

WORDS OF LIMITATION.

5.—(1) In a conveyance it shall not be necessary, in the ^{Words of} limitation of an estate in fee simple, to use the word heirs; ^{limitation.} or in the limitation of an estate in tail to use the words heirs ^{Imp. Act,} of the body; or in the limitation of an estate in tail male or ^{44-45 V.} in tail female to use the words heirs male of the body or heirs ^{c. 41, s. 51.} female of the body.

(2) For the purpose of such limitation it shall be sufficient ^{Idem.} in a conveyance to use the words in fee simple, in tail, in tail male, or in tail female, according to the limitation intended, or to use any other words sufficiently indicating the limitation intended.

(3) Where no words of limitation are used the conveyance ^{Effect of} shall pass all the estate, right, title, interest, claim and demand, ^{conveyance} which the conveying parties have, in, to, or on the property ^{without words} conveyed, or expressed or intended so to be, or which they ^{of limitation.} have power to convey in, to, or on the same. ^{Imp. Act,} ^{44 and 45 V.} ^{c. 41, s. 63.}

(4) Subsection 3 shall apply only if and as far as a con- ^{Saving.} trary intention does not appear from the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(5) This section shall apply only to conveyances made after ^{Operation} the 1st day of July, 1886. 1 Geo. V. c. 25, s. 5. ^{of section.}

PROVISIONS AS TO CONVEYANCES.

6. A receipt for consideration money or securities in the ^{Receipts.} body of a conveyance shall be a sufficient discharge to the ^{Imp. Act,} person paying or delivering the same without any further ^{44 and 45 V.} receipt being endorsed on the conveyance. 1 Geo. V. c. 25, ^{c. 41, s. 54.} s. 6.

7. A receipt for consideration money or other consideration ^{Receipt as} in the body of a conveyance or indorsed thereon shall, in ^{evidence for} favour of a subsequent purchaser, not having notice that the ^{subsequent} money or other consideration thereby acknowledged to be ^{purchaser.} received was not in fact paid or given, wholly or in part, be ^{Imp. Act,} ^{44 and 45 V.} ^{c. 41, s. 55.}

sufficient evidence of the payment or giving of the whole amount thereof. 1 Geo. V. c. 25, s. 7.

Rights of purchaser as to execution. Imp. Act, 44 and 45 V. c. 41, s. 8.

8. On a sale the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or that of his solicitor, but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor. 1 Geo. V. c. 25, s. 8.

Requirement of deed for certain interests.

9. A partition and an exchange of land and an assignment of a chattel interest in land, and a surrender in writing of land not being an interest which might by law have been created without writing, shall be void at law, unless made by deed. 1 Geo. V. c. 25, s. 9; 3-4 Geo. V. c. 18, s. 22.

Disposal of certain interests in land by deed.

10. A contingent, an executory, and a future interest, and a possibility coupled with an interest in land, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent, into or upon land, may be disposed of by deed; but no such disposition shall, by force only of this Act, defeat or enlarge an estate tail. 1 Geo. V. c. 25, s. 10.

Saving.

Exchange or partition. "Give" or "grant." Imp. Act, 8 and 9 V. c. 106, s. 4, part.

11. An exchange or a partition of any tenements or hereditaments shall not imply any condition in law, and the word "give" or the word "grant" in a conveyance shall not imply any covenant in law, except so far as the word "give" or the word "grant" may, by force of any Act in force in Ontario, imply a covenant. 1 Geo. V. c. 25, s. 11.

Application of preceding three sections.

12. The next preceding three sections shall not extend to any deed, act or thing, executed or done, or to any estate, right or interest created before the 1st day of January, 1850. 1 Geo. V. c. 25, s. 12.

Effect of grants, devises, etc., to two or more.

13.—(1) Where by any letters patent, assurance or will, made and executed after the first day of July, 1834, land has been or is granted, conveyed or devised to two or more persons other than executors or trustees in fee simple, or for any less estate, it shall be considered that such persons took or take as tenants in common, and not as joint tenants, unless an intention sufficiently appears on the face of such letters patent, assurance or will, that they are to take as joint tenants.

Husband and wife.

(2) This section shall apply notwithstanding that one of such persons is the wife of another of them. 1 Geo. V. c. 25, s. 13.

Land acquired by possession by two or more.

14. Where hereafter two or more persons acquire land by length of possession they shall be considered to hold as tenants in common and not as joint tenants. 1 Geo. V. c. 25, s. 14.

15.—(1) Every conveyance of land, unless an exception is specially made therein, shall include all houses, out-houses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, water-courses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever, to such land belonging or in any-wise appertaining, or with the same demised, held, used, occupied and enjoyed or taken or known as part or parcel thereof; and if the same purports to convey an estate in fee simple, also the reversion or reversions, remainder and remainders, yearly and other rents, issues and profits of the same land and of every part and parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever, of the grantor, into out of, or upon the same land, and every part and parcel thereof, with their and every of their appurtenances.

(2) Except as to conveyances under former Acts relating to short forms of conveyances, this section shall apply only to conveyances made after the 1st day of July, 1886. 1 Geo. V. c. 25, s. 15.

16. Unless the contrary appears to be the intent of the instrument where in a conveyance the “mining rights” in respect of any land are granted or reserved, such grant or reservation shall be construed to convey or reserve the ores, mines and minerals on or under the land, together with such right of access for the purpose of winning such ores, mines and minerals as is incidental to a grant of ores, mines and minerals. 3-4 Geo. V. c. 18, s. 23, *part*.

17. Unless the contrary appears to be the intent of the instrument where in a conveyance the “surface rights” in respect of any land are granted or reserved, such grant or reservation shall be construed to convey or reserve the land therein described with the exception of the ores, mines and minerals on or under such land and such right of access for the purpose of winning the ores, mines and minerals as is incidental to a grant of ores, mines and minerals. 3-4 Geo. V. c. 18, s. 23, *part*.

18. In any instrument purporting to deal with “mining rights” or “surface rights” these expressions shall respectively have the meaning affixed to them by the two next preceding sections. 3-4 Geo. V. c. 18, s. 23, *part*.

19. The three next preceding sections shall not go into force until the 1st day of July, 1914, but shall not apply to conveyances by the Crown. 3-4 Geo. V. c. 18, s. 23, *part*.

20. Any corporation capable of taking and conveying land in Ontario shall be deemed to have been and to be capable of

What to be included in conveyance.

Application of section.

Meaning of “mining rights.”

Meaning of “surface rights.”

Application.

Operation of ss. 16-18.

How corporations may convey.

taking and conveying land by deed of bargain and sale, in like manner as any person in his natural capacity, subject to any general limitations or restrictions and to any special provisions as to holding or conveying land which may be applicable to such corporation. 1 Geo. V. c. 25, s. 16.

PROVIDING FOR INCUMBRANCES ON SALES.

Provision for sales free from incumbrances. Imp. Act, 44-45 V. c. 41, s. 5.

Payment into Court.

Conveyance or vesting order.

Directions.

Effect of payment into Court.

How application made.

By purchaser.

By vendor.

21.—(1) Where land subject to an incumbrance, whether immediately payable or not, is sold by any Court or out of Court, the Supreme Court or the Court in which the sale takes place may, on the application of any party to the sale, direct or allow payment into Court, in the case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in securities approved by the Court, the Court considers will be sufficient by means of the income thereof to keep down or otherwise provide for that charge; and in any other case of capital money charged on the land, of an amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency except depreciation of investments, not exceeding one-tenth of the original amount to be paid in, unless the Court for special reasons thinks fit to require a larger additional amount.

(2) The Court may thereupon, either after or without notice to the incumbrancer, declare the land to be freed from the incumbrance, may make any order for conveyance, or vesting order, proper for giving effect to the sale, and may give directions for the retention and investment of the money in Court.

(3) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(5) The application shall be made in chambers, and on notice.

(6) On an application by a purchaser notice shall be served in the first instance on the vendor.

(7) On an application by a vendor notice shall be served in the first instance on the purchaser.

(8) On any application notice shall be served on such persons as the Court thinks fit. Notifying others.

(9) The Court may make such order as it deems just respecting the costs, charges or expenses of any of the parties to the application. 1 Geo. V. c. 25, s. 17. Costs.

IMPLIED COVENANTS.

22.—(1) In a conveyance made on or after the 1st day of July, 1886, there shall, in the cases in this section mentioned, be deemed to be included, and there shall in those cases be implied, covenants to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share thereof expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common: Covenants to be implied. Imp. Act, 44-45 V. c. 41, s. 7.

(a) In a conveyance for valuable consideration, other than a mortgage, the following covenants by the person who conveys, and is expressed to convey, as beneficial owner, namely, covenants for, On conveyance for value by beneficial owner. Imp. Act, 44-45 V. c. 41, s. 7.

- (I) Right to convey;
- (II) Quiet enjoyment;
- (III) Freedom from incumbrances; and
- (IV) Further assurance;

according to the forms of covenants for such purposes set forth in Schedule B to *The Short Forms of Conveyances Act*, and therein numbered 2, 3, 4 and 5, subject to the provisions of that Act; Rev. Stat. c. 115.

(b) In a conveyance of leasehold land for valuable consideration, other than a mortgage, the following further covenant, by the person who conveys and is expressed to convey as beneficial owner: On conveyance of leaseholds for value by beneficial owner.

That, notwithstanding anything by the person who so conveys, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by and all the covenants, conditions and agreements contained Validity of lease.

in the lease or grant, and on the part of the lessee or grantee, and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed, up to the time of conveyance;

On conveyance
by trustee, etc.
Imp. Act,
44-45 V.
c. 41, s. 7.

- (c) In a conveyance the following covenant by every person who conveys, and is expressed to convey, as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts only, namely;

Against
incumbrances.

That the person so conveying has not executed, or done, or knowingly suffered, or been party or privy to any deed, act, matter or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof is or may be impeached, charged, affected, or incumbered in title, estate or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying such subject-matter or any part thereof, in the manner in which it is expressed to be conveyed.

On settlement
for further
assurance,
limited.

- (d) In a conveyance by way of settlement the following covenant by a person who conveys and is expressed to convey as settlor, namely;

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made, and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required.

On conveyance
by direction
of beneficial
owner.

- (2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, the person giving the direction, whether or not he conveys and is expressed to convey, as beneficial owner, shall be deemed to convey, and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direc-

tion; and the covenants on his part mentioned in clause (a) of subsection 1 shall be implied accordingly.

(3) The benefit of a covenant so implied shall be annexed and incident to and shall go with the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is for the whole or any part thereof from time to time vested.

Enforcing
covenants.

(4) A covenant so implied may be varied or extended and as so varied or extended shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied.. 1 Geo. V. c. 25, s. 18.

Variation of
covenants.

(As to implied covenants in the case of mortgages see *The Mortgages Act.*)

Rev. Stat.
c. 112.

23.—(1) A covenant relating to land of inheritance or to land held for the life of another shall be deemed to be made with the covenantee his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

Operation of
covenants,
inheritance.

Imp. Act,
44-45 V.
c. 41, s. 58.

(2) A covenant relating to land not of inheritance or to land not held for the life of another shall be deemed to be made with the covenantee his executors, administrators and assigns, and shall have effect as if executors, administrators and assigns were expressed. 1 Geo. V. c. 25, s. 19.

Idem.

Not of
inheritance.

POWERS.

24.—(1) A deed executed in the presence of, and attested by, two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is especially required that a deed or instrument in writing, made in exercise of such power, shall be executed or attested with some additional or other form of execution or attestation or solemnity.

Mode of
executing
powers.
Imp. Act,
22-23 V.
c. 35, s. 12.

(2) This section shall not operate to defeat any direction in the deed or instrument creating the power that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the deed or instrument.

Saving of
other re-
quirements.

(3) Nothing in this section shall prevent the donee of a power from executing it conformably to the power. 1 Geo. V. c. 25, s. 20.

Power may be
observed.

Disclaimer
of power by
donee.
Imp. Act,
44 and 45 V.
c. 41, s. 52.

Disclaimer of
power.
45-46 V.
c. 39, s. 6 (2).

25.—(1) A person to whom a power, whether coupled with an interest or not, is given may by deed disclaim or release or contract not to exercise the power.

(2) A person disclaiming shall not afterwards be capable of exercising or joining in the exercise of the power, and on such disclaimer the power may be exercised by the other or others or the survivor or survivors of the others of the persons to whom the power is given unless the contrary is expressed in the instrument creating the power. 1 Geo. V. c. 25, s. 21.

Validity of
sale under
power
although
mistaken
payment to
tenant for
life.

Imp. Act,
22-23 V.
c. 35, s. 13.

26. Where, under a power of sale, a sale in good faith is made of an estate, with the timber thereon, or with any articles attached thereto, and the tenant for life, or any other party to the transaction, is by mistake allowed to receive for his own benefit a part of the purchase money or value of the timber or article, the Supreme Court, upon an action brought, or upon application made in a summary way, may declare, that upon payment by the purchaser, or the claimant under him, of the full value of the timber or article at the time of the sale, with such interest thereon as the Court directs, and the settlement of the principal money and interest under the direction of the Court, upon such persons as in the opinion of the Court are entitled thereto, the sale ought to be established; and upon payment and settlement being made accordingly, the Court may declare the sale valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed, and the costs of the application, as between solicitor and client, shall be paid by the purchaser or the claimant under him. 1 Geo. V. c. 25, s. 22.

ILLUSORY APPOINTMENTS.

Validity
of certain
appointments.

27.—(1) No appointment made in exercise of any power or authority, to appoint any property, real or personal, amongst several objects, shall be invalid or impeached on the ground that an unsubstantial, illusory or nominal share only is thereby appointed to, or left unappointed to devolve upon, any one or more of the objects of such power, or upon the ground that any object of such power has been altogether excluded; but every such appointment shall be valid and effectual, notwithstanding that anyone, or more, of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial, illusory, or take no share thereof or nominal share of the property subject to such power.

Imp. Act.
11 Geo. IV. and
1 Wm. IV.
c. 46, ss. 1, 2
and 3.
37 and 38 V.
c. 37, s. 1.

Saving of
positive re-
quirements
in constating
instrument.

(2) Nothing in this section shall prejudice or affect any provision in any deed, will, or other instrument creating any such power, which declares the amount of the share or shares from which no object of the power shall be excluded or that some one or more object or objects of the power shall not be excluded or give any validity, force or effect to any appointment, other than such appointment would have had if a sub-

stantial share of the property affected by the power had been thereby appointed to, or left unappointed, to devolve upon any object of such power. 1 Geo. V. c. 25, s. 23.

TENANCY BY THE CURTESY.

28. Where a husband has issue born alive and capable of inheriting any land to which his wife is entitled in fee simple, or fee tail, if the husband survive his wife, whether such issue live or not, the husband shall, subject to the provisions of *The Married Women's Property Act*, be entitled to an estate for his natural life in such land as may not have been disposed of by her deed or will; but if he has no such issue by his wife he shall not be entitled to any further or other estate or interest in such land in the event of surviving his wife, except such as may be devised to him by her will, or such as he may become entitled to under *The Devolution of Estates Act*.
 1 Geo. V. c. 25, s. 24.

Tenancy by the curtesy.

Imp. Rev. Stat., 1870, p. 129.

Rev. Stat. c. 149.

Rev. Stat. c. 119.

WASTE.

29. A tenant by the curtesy, a dowress, a tenant for life, or for years, and the guardian of the estate of an infant, shall be impeachable for waste, and liable in damages to the person injured. 1 Geo. V. c. 25, s. 25.

Waste by tenants by curtesy, dowress, etc. 6 Edw. I. (St. Gloucester), c. 5.

30. An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate. 1 Geo. V. c. 25, s. 26.

Waste by tenant for life without impeachment of waste.

31. Tenants in common, and joint tenants, shall be liable to their co-tenants for waste, or, in the event of a partition, the part wasted may be assigned to the tenant committing such waste, at the value thereof to be estimated as if no such waste had been committed. 1 Geo. V. c. 25, s. 27.

Waste between joint tenants and tenants in common. 13 Edw. I. (St. of Westminster Sec.) c. 22.

32. Lessees making or suffering waste on the demised premises without license of the lessors shall be liable for the full damage so occasioned. 1 Geo. V. c. 25, s. 28.

Waste by lessees. 52 Hen. III. (St. of Marlbridge), c. 23.

(For other remedies see *The Judicature Act*, s. 17.)

Rev. Stat. c. 56.

RELEASE OF PART OF LAND FROM RENT CHARGE.

33. The release from a rent-charge of part of the land charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of it out of the land released, without prejudice to the rights of all persons interested in the land remaining unreleased and not concurring in or confirming the release. 1 Geo. V. c. 25, s. 29.

Effect of release of part of land subject to rent-charge.

Imp. Act, 22 & 23 V. c. 35, s. 10.

FUTURE AND CONTINGENT USES.

Abrogation
of doctrine of
scintilla juris.

Imp. Act,
23-24 V.
c. 88, s. 7.

34. Where by any deed, will or other instrument any land is limited to uses, all uses thereunder, whether expressed or implied by law, and whether immediate or future, or contingent or executory, or to be declared under any power therein contained, shall take effect when and as they arise by force of and by relation to the estate and seisin originally vested in the person seised to the uses; and the continued existence in him or elsewhere of any seisin to uses or *scintilla juris* shall not be necessary for the support of, or to give effect to, future or contingent or executory uses; nor shall any such seisin to uses or *scintilla juris* be deemed to be suspended, or to remain or to subsist in him or elsewhere. 1 Geo. V. c. 25, s. 30.

CONTINGENT REMAINDERS.

Unaffected by
forfeiture,
etc., of pre-
ceding estate.

35. Every contingent remainder shall be capable of taking effect notwithstanding the determination by forfeiture, surrender or merger of any preceding estate of freehold. 1 Geo. V. c. 25, s. 81.

MERGER.

No merger of
estate by
operation of
law.
44 V. c. 5.

36. There shall not be any merger by operation of law only of any estate, the beneficial interest in which, prior to *The Ontario Judicature Act, 1881*, would not have been deemed merged or extinguished in equity. 1 Geo. V. c. 25, s. 32.

IMPROVEMENTS UNDER MISTAKE OF TITLE.

Lien on lands
for improve-
ments under
mistake of
title.

37. Where a person makes lasting improvements on land, under the belief that the land is his own, he or his assigns shall be entitled to a lien upon the same to the extent of the amount by which the value of the land is enhanced by such improvements; or shall be entitled or may be required to retain the land if the Court is of opinion or requires that this should be done, according as may under all circumstances of the case be most just, making compensation for the land, if retained, as the Court may direct. 1 Geo. V. c. 25, s. 33.

PURCHASES OF REVERSIONS.

Rule as to
purchases of
reversions.

38. No purchase made in good faith, and without fraud, of any reversionary interest in property shall be opened or set aside on the ground of undervalue. 1 Geo. V. c. 25, s. 34.

PURCHASER FOR VALUE WITHOUT NOTICE.

Onus of proof.

39. It shall not be necessary, in order to maintain the defence of a purchase for value without notice, to prove pay-

ment of the mortgage money or purchase money or any part thereof. 1 Geo. V. c. 25, s. 35.

ASSIGNMENT TO ASSIGNOR AND ANOTHER OR TO ASSIGNOR'S WIFE.

40. Any property may be conveyed by a person to him-^{Assignment of property to wife or self and others. Imp. Act, 44 and 45 V. c. 41, s. 50.}self jointly with another person, by the like means by which it might be conveyed by him to another person, and may in like manner be conveyed or assigned by a husband to his wife, or by a wife to her husband alone or jointly with another person, 1 Geo. V. c. 25, s. 36.

RIGHTS OF POSTHUMOUS CHILDREN.

41. Where any estate is, by any marriage or other settle-^{Capacity of posthumous children to take in remainder. Imp. Act, 10 Wm. III. c. 23.}ment, limited in remainder to, or to the use of, the first or other son or sons of the body of any person lawfully begotten, with any remainder over to, or to the use of, any other person or in remainder to, or to the use of, a daughter lawfully begotten, with any remainder to any other person, any son or daughter of such person lawfully begotten, or to be begotten, that shall be born after the decease of his or her father, shall, by virtue of such settlement, take such estate so limited to the first and other son or daughter in the same manner as if born in the lifetime of his or her father, although there may be no estate limited to trustees, after the decease of the father, to preserve the contingent remainder to such after born son, or daughter, until he or she come *in esse*, or is born, to take the same. 1 Geo. V. c. 25, s. 37.

PRODUCTION OF CESTUIS QUE VIE, AND TENANTS FOR LIFE.

42. If any person, for whose life an estate is granted, remains out of Ontario or absents himself therein for the space of seven years together, so that it cannot be ascertained whether he is alive or dead, and no sufficient proof is made of the life of such person in any action commenced for recovery of such estate by the lessor or reversioner, the person upon whose life such estate depended shall be accounted as naturally dead, and in every action brought for the recovery of the estate by the lessor or reversioner, his heirs, or assigns, judgment shall be given accordingly. 1 Geo. V. c. 25, s. 38.

43. If any person is evicted out of any land by virtue of section 42, and if afterwards the person, upon whose life such estate depends, returns to Ontario, or in any action to be brought for recovery of the same, is shown to be living, or to have been living at the time of the eviction, the tenant or lessee who was ousted, his executors, administrators or assigns, may re-enter, repossess, have, hold, and enjoy, the land in his former estate, for and during the life, or so long a term as the person upon whose life the estate depends shall be living;

Action for
mesne profits
with interest.

and also shall, upon action to be brought by him against the lessor, reversioner, or tenant in possession, or other person, who, since the time of the eviction, received the profits of the land, recover for damages the full profits thereof, with lawful interest for, and from, the time that he was ousted, and kept or held out of the land by such lessor, reversioner, tenant in possession, or other person, whether the person, upon whose life such estate depends is living or dead at the time of bringing of the action. 1 Geo. V. c. 25, s. 39.

Order for pro-
duction of
person at
instance of
reversioner,
etc.

44.—(1) The Supreme Court may, on the application of any person who has any claim or demand in, or to, any remainder, reversion, or expectancy, in, or to, any estate in land, after the death of any person within age, married woman, or any other person whomsoever, upon affidavit made by the person so claiming such estate of his title, and that he has cause to believe that such minor, married woman, or other person, is dead, and that his, or her, death is concealed by the guardian, trustee, husband, or any other person, which application may be made once a year if the person aggrieved shall think fit, order that such guardian, trustee, husband, or other person concealing, or suspected to conceal, such person, do, at such time and place as the Court shall direct, on personal or other due service of such order, produce and show to such person and persons, not exceeding two, as shall in such order be named by the party prosecuting such order such minor, married woman, or other person.

Order for pro-
duction of
person before
commissioner.

(2) If such guardian, trustee, husband, or such other person refuses or neglects to produce or show such minor, married woman, or such other person, on whose life any such estate depends, according to the directions of the order, the Court is hereby authorized and required to order such guardian, trustee, husband, or other person, to produce such minor, married woman, or other person concealed, in the Court, or otherwise before commissioners to be appointed by the Court, at such time and place as the Court shall direct, two of which commissioners shall be nominated by the party prosecuting such order, at his costs and charges.

Presumption
on failure to
produce.

(3) If such guardian, trustee, husband, or other person, refuses or neglects to produce such minor, married woman, or other person so concealed, in Court, or before such commissioners, whereof return shall be made by such commissioners, and filed in the Central Office, at Osgoode Hall, in either, or any, of such cases, such minor, married woman, or other person, shall be taken to be dead, and it shall be lawful for any person claiming any right, title, or interest, in remainder or reversion, or otherwise, after the death of such minor, married woman or other person, to enter upon such land as if such minor, married woman, or other person were actually dead. 1 Geo. V. c. 25, s. 40.

6 Anne, c. 72
(or c. 18 in
Ruffhead's
Ed.), s. 1.

45. If it appears to the Court by affidavit that such minor, married woman, or other person, is, or lately was, at some certain place out of Ontario in the affidavit to be mentioned, the party prosecuting such order, at his costs and charges, may send over one or both of the persons appointed by the order to view such minor, married woman, or other person, and if such guardian, trustee, husband, or other person, concealing, or suspected to conceal, such person, refuses or neglects to produce, or procure to be produced to such person or persons a personal view of such minor, married woman, or other person, then such person or persons shall make a true return of such refusal or neglect to the Court, which shall be filed in the Central Office, and thereupon such minor, married woman, or other person, shall be taken to be dead, and any person claiming any right, title, or interest, in remainder, reversion, or otherwise, after the death of such minor, married woman, or other person, may enter upon such land as if such minor, married woman, or other person were actually dead. 1 Geo. V. c. 25, s. 41.

Where person required to be produced is out of Ontario.

6 Anne, c. 72, (or c. 18 in Ruffhead's Ed.), s. 2.

46. If it shall afterwards appear, upon proof in any action to be brought, that such minor, married woman, or other person was alive at the time such order was made, such minor, married woman, guardian, or trustee, or other person, having any estate or interest determinable upon such life, may re-enter upon the land, and may maintain an action against those who, since the order, received the profits thereof, or their executors, or administrators, and recover full damages for the profits of the same received from the time that such minor, married woman, or other person, having any estate or interest determinable upon such life, was ousted of the possession of such land. 1 Geo. V. c. 25, s. 42.

When it appears that person required to be produced was alive.

6 Anne, c. 72 (or c. 18 in Ruffhead's Ed.), s. 2.

47. If any such guardian, trustee, husband, or other person, holding or having any estate or interest determinable upon the life of any other person, shall show, to the satisfaction of the Court, that he has used his utmost endeavour to procure such minor, married woman, or other person, on whose life such estate or interest depends, to appear in Court, or elsewhere according to the order, and that he cannot procure, or compel such appearance, and that such minor, married woman, or other person, is living, or was living at the time such return was made and filed the Court may order that such person may continue in the possession of such estate, and receive the rents and profits thereof, during the infancy of such minor, and the life of any other person, on whose life such estate or interest next depends, as fully as he might have done if this and the three next preceding sections had not been passed. 1 Geo. V. c. 25, s. 43.

When it appears that guardian, etc., cannot produce person who is alive.

6 Anne, c. 72 (or c. 18 in Ruffhead's Ed.), s. 4.

Guardians, trustees, etc., holding over without consent of re-mainderman, etc., deemed trespassers.

6 Anne, c. 72 (or c. 18 in Ruffhead's Ed.) s. 5.

Damages.

48. Every person having an estate or interest in land determinable upon any life, and the guardian or trustee for a minor having such an estate who, after the determination of such particular estate or interest, without the express consent of the person who is next and immediately entitled upon and after the determination of such particular estate or interest, holds over and continues in possession of any land, shall be deemed a trespasser, and every person entitled to any such land, upon and after the determination of such particular estate or interest, may recover in damages against every such person so holding over the full value of the profits received during such wrongful possession. 1 Geo. V. c. 25, s. 44.

ASSIGNMENTS OF CHOSSES IN ACTION.

Assignment of debt and choses in action.

49.—(1) Any absolute assignment, made on or after the 31st day of December, 1897, by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action of which express notice in writing shall have been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be effectual in law, subject to all equities which would have been entitled to priority over the right of the assignee if this section had been enacted, to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same without the concurrence of the assignor.

Where several claimants under assignment.

(2) In case of an assignment of a debt or other chose in action, if the debtor, trustee or other person liable in respect of the debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he thinks fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he thinks fit, pay the same into the Supreme Court under and in conformity with the provisions of law for the relief of trustees. 1 Geo. V. c. 25, s. 45.

DEBENTURES OF CORPORATIONS TRANSFERABLE.

Bonds and debentures of corporations.

50.—(1) The bonds or debentures of a corporation made payable to bearer, or to any person named therein or bearer, may be transferred by delivery, and if payable to any person or order, after general endorsement thereof by such person, shall be transferable by delivery.

Rights of holder.

(2) Any such transfer shall vest the property in the bond or debenture in the holder thereof and enable him to maintain an action thereon in his own name. 1 Geo. V. c. 25, s. 46.

AUCTIONS OF ESTATES.

51. Unless in the particulars or conditions of sale by auction of any land it is stated that such land will be sold subject to a reserved price, or to a right of the seller to bid, the sale shall be deemed to be without reserve. 1 Geo. V. c. 25, s. 47.

When sale
deemed
without
reserve.

52. Upon any sale of land by auction, without reserve, it shall not be lawful for a seller or for a puffer to bid at such sale, or for the auctioneer to take, knowingly, any bidding from the seller or from a puffer. 1 Geo. V. c. 25, s. 48.

Idem.
Prohibition
against seller
bidding.

53. Upon any sale of land by auction, subject to a right for the seller to bid, it shall be lawful for the seller or any one puffer to bid at such auction in such manner as the seller may think proper. 1 Geo. V. c. 25, s. 49.

When seller
may bid.

54. Nothing in the next preceding three sections shall authorize any seller to become the purchaser at the sale. 1 Geo. V. c. 25, s. 50.

Seller not
authorized
to purchase.

FRAUDS IN SALES OR MORTGAGES OF PROPERTY.

55. If any seller or mortgagor of property or his solicitor or agent conceals any settlement, deed, will or other instrument material to the title, or any incumbrance, from the purchaser or mortgagee, or falsifies any pedigree upon which the title depends or may depend, in order to induce him to accept the title offered or produced to him, with intent to defraud, such seller, mortgagor, solicitor or agent, irrespective of any criminal liability he may thereby incur, shall be liable at the suit of the purchaser or mortgagee, or those claiming under him, for any loss sustained by them or either or any of them, in consequence of the settlement, deed, will or other instrument or incumbrance so concealed, or of any claim made by any person under such pedigree, whose right was so concealed by the falsification of such pedigree; and in the case of land in estimating such damages where the property is recovered from such purchaser or mortgagee, or from those claiming under him, regard shall be had to any expenditure by them, or either or any of them, in improvements on the land. 1 Geo. V. c. 25, s. 51.

Liability of
vendor or
mortgagor
for fraudulent
concealment of
deeds, etc.,
or falsifying
pedigree
Imp. Acts
22-23 V.
c. 35, s. 24 and
23-24 V.
c. 38, s. 8.

EFFECT OF ORDERS OF COURT.

56. An order of the Court under any statutory or other jurisdiction shall not, as against a purchaser, whether with or without notice, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service. 1 Geo. V. c. 25, s. 52.

Order of Court
not invalid-
dated as
against pur-
chaser for
want of juris-
diction, etc.

CHAPTER 110.

An Act to restrain the Accumulation of the Profits or Produce of Real or Personal Estate.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Accumulations Act*.
10 Edw. VII. c. 46, s. 1.

Limitation
of period
during which
accumulation
permitted.

2.—(1) No person shall, by any deed, surrender, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property so that the rents, issues, profits or produce thereof shall be wholly or partially accumulated for any longer than one of the following terms, viz. :

- (a) For the life of the grantor;
- (b) For twenty-one years from the death of the grantor or testator;
- (c) For the period of minority of any person living, or *en ventre sa mere*, at the death of the grantor or testator;
- (d) For the period of minority of any person who, under the instrument directing the accumulation, would for the time being, if of full age, be entitled to the income, or rents and profits, directed to be accumulated.

Accumulations
for the
purchase
of land.
Imp. Act,
55-56 Vict.
c. 58.

(2) No accumulation for the purchase of land shall be directed for any longer period than that mentioned in the preceding subsection.

Application of
invalid
accumulations.
Imp. Act,
39-40 Geo. 3,
c. 98, s. 1.

(3) Where an accumulation is directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person as would have been entitled thereto, if such accumulation had not been directed. 10 Edw. VII. c. 46, s. 2.

Saving
as to debts
or portions for
children.

3. Nothing in this Act shall extend to any provision for payment of debts of any grantor, settlor or devisor, or other person, or to any provision for raising portions for any child

of any grantor settlor, or devisor, or for any child of any person taking any interest under any such conveyance, settlement or devise, or to any direction touching the produce of timber or wood upon any lands or tenements, but all such provisions and directions shall and may be made and given as if this Act had not passed. 10 Edw. VII. c. 43, s. 3.

4. The restrictions in this Act shall take effect and be in force with respect to wills and testaments made and executed before the 4th day of March, 1837, only in cases where the devisor or testator was living and of sound and disposing mind after the expiration of twelve calendar months from that day. 10 Edw. VII. c. 46, s. 4.

How far
Act applies
to wills made
before 4th
March, 1837.
Imp. Act
39 & 40
Geo. 3. c. 98,
s. 4.

CHAPTER 111.

An Act respecting Petty Trespasses.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Petty Trespass Act*. 10 Edw. VII. c. 50, s. 1.

Penalty for trespass.

2. Any person who unlawfully enters into, comes upon or passes through or in any way trespasses upon any land the property of another person, which is wholly enclosed or is a garden or lawn, shall incur a penalty of not less than \$1 or more than \$10, whether any damage has or has not been occasioned thereby, recoverable under *The Ontario Summary Convictions Act*. 10 Edw. VII. c. 50, s. 2.

Rev. Stat. c. 90.

Arrest of trespasser without warrant.

3. Any person found committing such a trespass may be apprehended without warrant by any peace officer, or by the owner of the land on which it is committed, or the servant of, or any person authorized by such owner, and be forthwith taken before the nearest Justice of the Peace to be dealt with according to law. 10 Edw. VII. c. 50, s. 3.

Saving cases involving title to land.

4. Nothing in this Act shall authorize any Justice of the Peace to hear and determine any case of trespass in which the title to land, or to any interest therein, shall be called in question or affected; but every such case shall be dealt with according to law in the same manner as if this Act had not been passed. 10 Edw. VII. c. 50, s. 4.

Saving persons claiming a right.

R.S.C. c. 146.

5. Nothing in sections 2 and 3 shall extend to any case where the person trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, or to any case within section 539 of *The Criminal Code*. 10 Edw. VII. c. 50, s. 5.

By-laws to declare boundaries in marshes.

6. The council of a township may pass by-laws for declaring that in the case of land, the boundary line, or any part of the boundary line, of which passes through a marsh or swamp, or any land covered with water, the same, so far as respects that part of the boundary line which so passes, shall be deemed to be wholly enclosed within the meaning of this Act if posts are maintained along such part at distances which will permit of each being clearly visible from the next post. 2 Geo. V. c. 17, s. 25 (1).

CHAPTER 112.

An Act respecting Mortgages of Real Estate.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Mortgages Act*. 10 Edw. Short title. VII. c. 51, s. 1.

2. In this Act,

Interpretation.

- (a) "Conveyance" shall include assignment, appointment, lease, settlement and other assurance and covenant to surrender made by deed on a sale, mortgage, demise or settlement of any property or on any other dealing with or for any property; and "convey" shall have a meaning corresponding with that of conveyance. "Conveyance."
- (b) "Incumbrance" shall include a mortgage in fee or for a less estate, a trust for securing money, a lien, and a charge of a portion, annuity or other capital or annual sum; and "incumbrancer" shall have a meaning corresponding with that of incumbrance, and shall include every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof. "Incumbrance."
"Incumbrancer."
- (c) "Land" shall include tenements and hereditaments, corporeal or incorporeal, houses and other buildings, and also an undivided share in land. "Land."
- (d) "Mortgage" shall include any charge on any property for securing money or money's worth; "mortgage money" shall mean money or money's worth secured by a mortgage; "mortgagor" shall include any person deriving title under the original mortgagor or entitled to redeem a mortgage, according to his estate, interest or right in the mortgaged property; and "mortgagee" shall include any person deriving title under the original mortgagee. 10 Edw. VII. c. 51, s. 2. "Mortgage."
"Mortgage money."
"Mortgagor."
"Mortgagee."

PART I.

RIGHTS AND OBLIGATIONS OF MORTGAGORS AND MORTGAGEES.

3.—(1) Notwithstanding any stipulation to the contrary where a mortgagor is entitled to redeem he may require the mortgagee, instead of giving a certificate of payment or reconveying, Obligation on mortgagee to transfer instead of reconveying.

Imp. Act,
44 and 45 V.
c. 41, s. 15.

veying and on the terms on which he would be bound to re-convey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs; and the mortgagee shall be bound to assign and convey accordingly.

Idem.

Imp. Act,
45 and 46 V.
c. 39, s. 12.

(2) The right of the mortgagor to require an assignment shall belong to and be capable of being enforced by each incumbrancer or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over that of the mortgagor, and as between incumbrancers a requisition of a prior incumbrancer shall prevail over that of a subsequent incumbrancer.

Exception.

(3) This section shall not apply if the mortgagee is or has been in possession. 10 Edw. VII. c. 51, s. 3.

Right of
mortgagor to
inspect title
deeds.

Imp. Act,
44 and 45 V.
c. 41, s. 16.

4. Notwithstanding any stipulation to the contrary a mortgagor, as long as his right to redeem subsists, shall be entitled, at reasonable times, on his request, and at his own cost and on payment of the mortgagee's costs and expenses in that behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee. 10 Edw. VII. c. 51, s. 4.

Action for
possession
of land by
mortgagor.

5. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or sue or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person, and in that case he may sue or distrain jointly with such other person. 3-4 Geo. V. c. 18, s. 24.

Application of
insurance
money.

6.—(1) All money payable to a mortgagor on an insurance of the mortgaged property, including effects, whether affixed to the freehold or not, being or forming part thereof, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

Idem.

Imp. Act,
44 and 45 V.
c. 41, s. 28.

(2) Without prejudice to any obligation to the contrary imposed by law or by special contract a mortgagee may require that all money received on an insurance of the mortgaged property be applied in or towards the discharge of the money due under his mortgage. 10 Edw. VII. c. 51, s. 5.

Covenants to
be implied.

Imp. Act,
44 and 45 V.
c. 41, s. 7.

7. There shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases be implied, covenants to the effect in this section stated,

by the person or by each person who conveys, as far as regards the subject-matter or share thereof expressed to be conveyed by him with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say:—

- (a) In a conveyance by way of mortgage the following On mortgage, by beneficial owner. covenants by the person who conveys, and is expressed to convey as beneficial owner, namely, covenants,
- (i) For payment of the mortgage money and interest, and observance in other respects of the proviso in the mortgage;
 - (ii) For good title;
 - (iii) For right to convey;
 - (iv) That, on default, the mortgagee shall have quiet possession of the land; free from all incumbrances;
 - (v) That the mortgagor will execute such further assurances of the said lands as may be requisite; and
 - (vi) That the mortgagor has done no act to incumber the land mortgaged,

according to the forms of covenants for such purposes set forth in Schedule B to *The Short Forms of Mortgages Act*, Rev. Stat. c. 117. subject to the provisions of that Act:

- (b) In a conveyance by way of mortgage of leasehold On mortgage of leaseholds, by beneficial owner. property, the following further covenants by the person who conveys and is expressed to convey, as beneficial owner, namely,
- (i) That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed, and is in full force, unforfeited, and unsurrendered, and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance; and also
 - (ii) That the person so conveying, or the persons Validity of lease. deriving title under him, will at all times, Payment of rent and performance of covenants. as long as any money remains on the security

of the conveyance, pay, observe and perform, or cause to be paid, observed and performed, all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, and will keep the person to whom the conveyance is made and those deriving title under him indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent, or the non-observance or non-performance of such covenants, conditions and agreements, or any of them. 10 Edw. VII. c. 51, s. 6.

Implied covenants in mortgages are joint and several.

Imp. Act, s. 23.

8. In a mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenants on their part shall be deemed to be joint and several covenants by them; and where there are more mortgagees than one the implied covenant with them shall be deemed to be a covenant with them jointly unless the amount is expressed to be secured to them in shares or distinct sums; in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him. 10 Edw. VII. c. 51, s. 7.

Release of equity of redemption without merger of debt.

9.—(1) A mortgagee of freehold or leasehold property may take and receive from the mortgagor a release of the equity of redemption in such property, or may purchase the same under any judgment or decree or execution without thereby merging the mortgage debt as against any subsequent mortgagee or person having a charge on the same property.

Position of subsequent mortgagee.

(2) Where a prior mortgagee so acquires the equity of redemption of the mortgagor no subsequent mortgagee shall be entitled to foreclose or sell such property without redeeming or selling, subject to the rights of such prior mortgagee, in the same manner as if such prior mortgagee had not acquired the equity of redemption.

Priority under registry.

(3) This section shall not affect any priority or claim any mortgagee may have under the registry laws. 10 Edw. VII. c. 51, s. 8.

Powers of executors of mortgagee.

10. Where a person entitled to any freehold land by way of mortgage has died, and his executor or administrator has become entitled to the money secured by the mortgage, or has assented to a bequest thereof, or has assigned the mortgage debt, such executor or administrator, if the mortgage money

was paid to the testator or intestate in his lifetime, or on payment of the principal money and interest due on the mortgage, or on receipt of the consideration money for the assignment, may convey, assign, release or discharge the mortgage debt and the mortgagee's estate in the land; and such executor or administrator shall have the same power as to any part of the land on payment of some part of the mortgage debt, or on any arrangement for exonerating the whole or any part of the mortgaged land, without payment of money; and such conveyance, assignment, release or discharge shall be as effectual as if the same had been made by the persons having the mortgagee's estate. 10 Edw. VII. c. 51, s. 9.

(As to Mortgages or Advances on Joint Account see The *Rev. Stat.*
Mercantile Law Amendment Act). c. 183.

11. The payment in good faith of any money to and the receipt thereof by the survivor or survivors of two or more mortgagees, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the security. 10 Edw. VII. c. 51, s. 10.

12. The purchaser in good faith of a mortgage may, to the extent of the mortgage, and except as against the mortgagor, set up the defence of purchase for value without notice in the same manner as a purchaser of the mortgaged property might do. 10 Edw. VII. c. 51, s. 11.

13. The right of a mortgagee to distrain for interest in arrear upon a mortgage made after the 25th day of March, 1886, shall be limited to the goods and chattels of the mortgagor, and to such of them as are not exempt from seizure under execution. 10 Edw. VII. c. 51, s. 12.

14.—(1) As against creditors of a mortgagor, or person in possession of mortgaged premises under a mortgagor, the right, if any, to distrain upon the mortgaged premises for arrears of interest or for rent, in the nature of or in lieu of interest under the provisions of any mortgage executed after the 23rd day of April, 1887, shall be restricted to one year's arrears of such interest or rent.

(2) This restriction shall not apply unless some one of such creditors shall be an execution creditor, or unless there shall be an assignee for the general benefit of such creditors appointed before lawful sale of the goods and chattels distrained, nor unless the officer executing such writ of execution or such assignee shall, by notice in writing to be given to the person distraining or his attorney, bailiff, or agent before such lawful sale, claim the benefit of such restriction.

Duty of
distrainor
when restric-
tion applies.

(3) When such notice is given the distrainor shall relinquish to the officer or assignee the goods and chattels so distrained, upon receiving one year's arrears of such interest or rent and his reasonable costs of distress, or if such arrears and costs shall not be paid or tendered he shall sell only so much of the goods and chattels distrained as shall be necessary to satisfy one year's arrears of such interest or rent and the reasonable costs of distress and sale, and shall thereupon relinquish any residue of them, and pay any residue of money, proceeds thereof so distrained, to such officer or assignee.

Reimburse-
ment of officer
or assignee.

(4) An officer executing an execution, or an assignee who pays any money to relieve goods and chattels from distress under this section, shall be entitled to reimburse himself therefor out of the proceeds of the sale thereof.

Notice of sale.

(5) The goods and chattels distrained shall not be sold except after such public notice as is now required to be given by a landlord who sells goods and chattels distrained for rent. 10 Edw. VII. c. 51, s. 13.

Payment of
principal after
default.

15.—(1) In the case of mortgages made after the 1st day of July, 1888, and before the 12th day of June, 1903, unless it is otherwise expressly provided in the mortgage or otherwise with respect to notice or the payment of interest in lieu of notice, the mortgagor may pay the whole principal money if overdue or any instalment thereof which has become payable according to the terms and conditions of the mortgage without previous notice to the mortgagee and without the payment of any interest in lieu of such notice.

Exception.

(2) Principal money or any instalment thereof shall not be deemed to be overdue or payable within the meaning of this section where it has become payable only by reason of default in payment of part of the principal or interest. 10 Edw. VII. c. 51, s. 14.

Payment of
principal
upon default.
After 12th
June, 1903.

16.—(1) Notwithstanding any agreement to the contrary, where default has been made in the payment of any principal money secured by a mortgage of freehold or leasehold property made on or after the 12th day of June, 1903, the mortgagor or person entitled to make such payment may at any time, upon payment of three months' interest on the principal money so in arrear, pay the same, or he may give the mortgagee at least three months' notice, in writing, of his intention to make such payment at a time named in the notice, and in the event of his making such payment on the day so named he shall be entitled to make the same without any further payment of interest except to the date of payment.

Exception.

(2) If the mortgagor or person entitled to make such payment fails to make the same at the time mentioned in the notice he shall thereafter be entitled to make such payment only on paying the principal money so in arrear and interest

thereon to the date of payment together with three months' interest in advance.

(3) Nothing in this section shall affect or limit the right of ^{Saving.} the mortgagee to recover by action or otherwise the principal money so in arrear after default has been made. 10 Edw. VII. c. 51, s. 15.

17.—(1) Where any principal money or interest secured by a mortgage of freehold or leasehold property, made after the 1st day of July, 1903, is not, under the terms of the mortgage, payable till a time more than five years after the date of the mortgage, then if, at any time after the expiration of such five years, any person liable to pay or entitled to redeem tenders or pays to the person entitled to receive the money the amount due for principal money and interest to the time of such tender or payment, together with three months' further interest in lieu of notice, no further interest shall be chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage. ^{Right to redeem after five years.}

(2) Nothing in this section shall affect the provisions of subsection 5 of section 35 of *The Loan and Trust Corporations Act*, or shall apply to any mortgage given by a joint stock company or other corporation nor to any debenture issued by any such company or corporation for the payment of which security has been given on freehold or leasehold property. ^{Rev. Stat. c. 184. Exception.} 10 Edw. VII. c. 51, s. 16.

18.—(1) Where in a mortgage falling due after the 20th day of April, 1907, provision is made that if interest is paid promptly it will be accepted at a lower rate than that provided in such mortgage, and interest at such lower rate has been paid according to such condition up to the time when all the principal money has become payable, any person liable to pay or entitled to redeem shall be entitled to pay the principal money and interest on the same at such lower rate at any time after the time for payment of the principal money on giving three months' notice of his intention to make such payment or on paying three months' interest at such lower rate in lieu of notice. ^{Paying off mortgage when provision made for a lower rate for punctual payment.}

(2) If the mortgagor, or person entitled to make such payment, fails to make the same at the time mentioned in such notice he shall thereafter be entitled to make such payment only on paying the principal and interest at the lower rate to the date of payment, together with three months' interest in advance. 10 Edw. VII. c. 51, s. 17. ^{Mortgagor failing to pay according to notice.}

PART II.

STATUTORY POWERS.

19. Where any principal money is secured by mortgage of land executed after the 11th day of March, 1879, the mortgagee shall, at any time after the expiration of four months ^{Powers incident to mortgages after default for certain time.}

Imp. Act,
44 and 45 V.
c. 41, s. 19 (2).

from the time when the principal money shall have become payable, according to the terms of the mortgage, or after any interest on the principal money shall have been in arrear for six months, or after any omission to pay any premium on any insurance which, by the terms of the mortgage, ought to be paid by the mortgagor, have the following powers to the like extent as if they had been in terms conferred by the mortgage but not further, namely:

Power of sale.

(a) A power to sell, or concur with any other person in selling, the whole or any part of the mortgaged property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to buy in at an auction and to rescind or vary contracts for sale, and to re-sell the land, from time to time, in like manner without being answerable for any loss occasioned thereby;

Power to insure.

(b) A power to insure and keep insured against loss or damage by fire any building or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money and with the same priority and with interest at the same rate as the mortgage money. 10 Edw. VII. c. 51, s. 18.

Receipts for purchase money sufficient discharges.

20. A receipt for purchase money given by the person exercising the power of sale by the next preceding section conferred shall be a sufficient discharge to the purchaser, who shall not be bound to see to the application of the purchase money. 10 Edw. VII. c. 51, s. 19.

Notice before sale.

21.—(1) No sale under the power conferred by section 19 shall be made until after two months' notice in writing, Form 1, has been given to every subsequent incumbrancer, and to the mortgagor, either personally or at his usual or last place of residence in Ontario.

When to be given.

(2) The notice may be given at any time after any default in making a payment provided for by the mortgage.

Case of an infant.

(3) In case of the death of the person entitled subject to the mortgage, and of his interest passing to an infant, the notice shall be given to his personal representative as well as to the infant.

Service upon infant.

(4) The notice to the infant shall be served upon his guardian, and if he has no guardian upon the Official Guardian, and in every case upon the infant himself if over the age of twelve years. 10 Edw. VII. c. 51, s. 20.

22. Where a conveyance has been made in professed exercise of the power of sale conferred by section 19 the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that such power had been improperly or irregularly exercised, or that such notice has not been given; but any person damnified by an unauthorized, improper or irregular exercise of the power shall have his remedy against the person exercising the power. 10 Edw. VII. c. 51, s. 21.

Title of
purchaser.

44 and 45
Vic., Imp.,
c. 41, s. 21 (2).

(As to registration of notice, see *The Registry Act*, s. 58.)

Rev. Stat.
c. 124.

23. The money arising from the sale shall be applied by the person receiving the same as follows:

Application of
purchase
money.

Firstly, in payment of all the expenses incident to the sale or incurred in any attempted sale;

Secondly, in discharge of all interest and costs then due in respect of the mortgage under which the sale was made;

Thirdly, in discharge of all the principal money then due in respect of such mortgage; and

Fourthly, in payment of the amounts due to the subsequent incumbrancers according to their priorities,

and the residue shall be paid to the mortgagor. 10 Edw. VII. c. 51, s. 22.

24. The person exercising the power of sale shall have power to convey or assign to and vest in the purchaser the property sold for all the estate and interest therein of the mortgagor and of which he had power to dispose. 10 Edw. VII. c. 51, s. 23.

Conveyance to
the purchaser.

25. At any time after the power of sale shall have become exercisable the person entitled to exercise the same shall be entitled to demand and recover from the mortgagor all deeds and documents in his possession or power relating to the mortgaged property, or to the title thereto, which he would have been entitled to demand and recover if the property had been conveyed, appointed, surrendered or assigned to and was then vested in him for all the estate and interest of the mortgagor and of which he had power to dispose; and where the legal estate is outstanding in a trustee the mortgagee, or any purchaser from him, shall be entitled to call for a conveyance of the legal estate to the same extent as the mortgagor could have called for such a conveyance if the mortgage had not been made. 10 Edw. VII. c. 51, s. 24.

Right to title
deeds and
conveyance of
legal estate.

26. So much of this Part as confers a power to sell shall not apply in the case of a mortgage which contains a power of sale except as in section 27 provided; and so much as con-

Application
of Part II.

fers a power to insure shall not apply in the case of a mortgage which contains a power to insure; nor shall any of the provisions of this Part apply to a mortgage which contains a declaration that this Part shall not apply thereto. 10 Edw. VII. c. 51, s. 25.

Mortgagee's
option as
to proceedings.
Rev. Stat.
c. 117.

27.—(1) Where a mortgage made in pursuance of *The Short Forms of Mortgages Act* contains a power of sale in the form No. 14, in Column One of Schedule B to that Act, the mortgagee may, in exercising the power, in lieu of taking the proceedings provided for by such form, Column Two, take proceedings under and have the benefit of the provisions of this Part, except that such power shall not be exercisable until after at least four months' default and at least two months' notice, or such longer periods as may by the power contained in such mortgage be fixed therefor, and this Part shall apply to a sale made under such power.

Idem.

(2) Where a mortgage purporting to be made in pursuance of *The Short Forms of Mortgages Act* contains a power of sale which provides for a sale without notice, the mortgagee may take proceedings to sell under and have the benefit of the provisions of this Part as fully and effectually as if the mortgage had not contained a power of sale.

(3) Subsection 2 shall apply to all mortgages whether heretofore or hereafter made. 10 Edw. VII. c. 51, s. 26.

PART III.

GENERAL PROVISIONS AS TO POWER OF SALE.

Contents
of notice.

28. A notice of exercising a power of sale shall state the amounts claimed to be due for principal, interest and costs respectively. 10 Edw. VII. c. 51, s. 27.

Restrictions as
to proceedings.

29.—(1) Where, pursuant to any condition or proviso contained in a mortgage, there has been made or given a demand or notice either requiring payment of the money secured by such mortgage, or any part thereof, or declaring an intention to proceed under and exercise the power of sale therein contained, no further proceeding and no action either to enforce such mortgage, or with respect to any clause, covenant or provision therein contained, or to the mortgaged property or any part thereof, shall, until after the lapse of the time at or after which, according to such demand or notice, payment of the money is to be made or the power of sale is to be exercised or proceeded under, be commenced or taken unless and until an order permitting the same has been obtained from a Judge of the County or District Court of the County or District in which the mortgaged property or any part thereof is situate, or from a Judge of the Supreme Court.

(2) The order may be obtained *ex parte* upon such proof as satisfies the Judge that it is reasonable and equitable that the proposed action or proceeding should be permitted. Proof on which order may be granted.

(3) This section shall not apply to proceedings to stay waste or other injury to the mortgaged property. 10 Edw. VII. c. 51, s. 28. Exception.

(As to costs of order see *The Judges' Orders Enforcement Act.*) Rev. Stat. c. 79.

30.—(1) Where such demand or notice requires payment of all money secured by or under a mortgage the person making such demand or giving such notice shall be bound to accept and receive payment of the same if made as required by the terms of such demand or notice. Payment made in terms of notice.

(2) If there is a dispute as to the costs payable by the person by or on whose behalf such payment is either made or tendered such costs shall, on three clear days' notice to such person by the person claiming the same, be taxed and ascertained by the Clerk of the County or District Court, or by the Local Master of the county or district in which the mortgaged property or any part thereof is situate. Payment or tender of costs.

(3) If within ten days after the costs have been so taxed and ascertained, payment of such money and costs is duly made or tendered to the person entitled thereto, or to his solicitor or agent, the same shall be deemed a compliance with such demand or notice. Compliance with demand.

(4) A mortgagee's costs of and incidental to the exercise of a power of sale, whether under this Part or otherwise, may, without an order, be taxed by one of the taxing officers of the Supreme Court at Toronto or by a local master having jurisdiction in the county or district in which the mortgaged property or any part of it is situate at the instance of any person interested. 10 Edw. VII. c. 51, s. 29. Taxation of costs.

FORM I.

NOTICE OF SALE UNDER MORTGAGE.

I hereby require you on or before the day of 19 , (a day not less than two calendar months from the service of the notice, and not less than six months after the default), to pay off the principal money and interest secured by a certain mortgage dated the day of 19 , and expressed to be made between (here state parties and describe mortgaged property), which mortgage was registered on the day of 19 , (and if the mortgage has been assigned add: and has since become the property of the undersigned). And I hereby give you notice that the amounts due on the said mortgage for principal, interest, and costs respectively, are as follows: (set the same forth).

And unless the principal money, interest and costs are paid on or before the said day of 19 , I shall sell the property comprised in the said mortgage under the authority of *The Mortgages Act.*

Dated the day of

19 .

10 Edw. VII. c. 51, Form I.

CHAPTER 113.

An Act respecting the Assurance of Estates Tail.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. 1. This Act may be cited as *The Estates Tail Act*. 10 Edw. VII. c. 52, s. 1.

Interpretation. 2.—(1) In this Act,

“Actual tenant in tail.” (a) “Actual tenant in tail” shall mean exclusively the tenant of an estate tail which has not been barred, and such tenant shall be deemed an actual tenant in tail, although the estate tail may have been divested or turned into a right;

“Base fee.” (b) “Base fee” shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred;

“Estate.” (c) “Estate” shall include an estate in equity as well as at law and any interest, charge, lien or incumbrance in, upon or affecting land, either at law or in equity, and any interest, charge, lien or incumbrance in, upon or affecting money subject to be invested in the purchase of land;

“Estate tail.” (d) “Estate tail” shall include a base fee into which an estate tail has been converted;

“Land.” (e) “Land” shall include messuages, lands, tenements, rents and hereditaments of any tenure and whether corporeal or incorporeal, and any undivided share thereof;

“Money subject to be invested in the purchase of land.” (f) “Money subject to be invested in the purchase of land” shall include money, whether raised or to be raised, and whether the amount thereof is or is not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of land and the land to be purchased with such money or produce shall include land of any tenure out of Ontario, where such land is within the scope

or meaning of the trust or power directing or authorizing the purchase;

- (g) "Tenant in tail" shall include a person who, where ^{"Tenant in tail"} an estate tail has been barred and converted into a base fee, would have been tenant of such estate tail if the same had not been barred;
- (h) "Tenant in tail entitled to a base fee" shall mean ^{"Tenant in tail entitled to a base fee."} a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail.

(2) Every assurance already made or hereafter to be made ^{Settlement.} whether by deed, will, Act of this Legislature or otherwise, by which land heretofore has been or may hereafter be entailed, or agreed or directed to be entailed, shall be deemed a settlement.

(3) Every appointment made in exercise of any power ^{Appointment in exercise of a power under a settlement.} contained in a settlement, or of any other power arising out of the power contained in a settlement, shall be considered as a part of such settlement, and the estate created by such appointment shall be considered as having been created by such settlement.

(4) Where such settlement is made by will the time of ^{What deemed date of settlement.} the death of the testator shall be considered the time when such settlement was made. 10 Edw. VII. c. 52, s. 2.

3. All warranties of land made or entered into by a tenant ^{Invalidity of warranties.} in tail thereof shall be absolutely void against the issue in tail, and all persons whose estates are to take effect after the determination or in defeasance of the estate tail. 10 Edw. VII. c. 52, s. 3.

4. Every actual tenant in tail, whether in possession, remainder, contingency or otherwise, may dispose of, for an estate in fee simple absolute, or for any less estate, the land entailed as against all persons, claiming the land entailed by force of any estate tail vested in or which might be claimed by or which, but for some previous act, would have been vested in, or might have been claimed by the person making the disposition at the time of his making the same, and also as against all persons, including His Majesty, whose estates are to take effect after the determination, or in defeasance of such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition is made, and the rights of all other persons except those against whom such disposition is, by this Act, authorized to be made. 10 Edw. VII. c. 52, s. 4. ^{Power to dispose of lands in fee simple or for a less estate, etc.}

Exceptions
to s. 4.

34 and 35
Hen. VIII.
c. 20.

Power to en-
large base fees
saving the
rights of cer-
tain persons.

Entail of
expectant
interest.

Extent of
estate created
by a tenant in
tail by way of
mortgage or
for any other
limited
purpose.

Who to be
deemed the
protector of
the settlement.

5. The power of disposition hereinbefore contained shall not extend to tenants of estates tail who, by any Act, are restrained from barring their estates tail or to tenants in tail after possibility of issue extinct. 10 Edw. VII. c. 52, s. 5.

6. Where an estate tail has been barred and converted into a base fee the person who, if such estate tail had not been barred, would have been actual tenant in tail of land may dispose of such land as against all persons, including His Majesty, whose estates are to take effect after the determination, or in defeasance of the base fee into which the estate tail has been converted, so as to enlarge the base fee into a fee simple absolute, saving always the right of all persons, in respect of estates prior to the estate tail which has been converted into a base fee, and the rights of all other persons except those against whom such disposition is by this Act authorized to be made.. 10 Edw. VII. c. 52, s. 6.

7. Nothing in this Act shall enable any person to dispose of any land entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein. 10 Edw. VII. c. 52, s. 7

8. If a tenant in tail makes a disposition of the land under this Act, by way of mortgage, or for any other limited purpose, such disposition shall, to the extent of the estate thereby created, be an absolute bar to all persons as against whom such disposition is by this Act authorized to be made, notwithstanding any intention to the contrary expressed or implied in the deed by which the disposition is effected; but if the estate created by such disposition is only an estate *pur autre vie*, or for years absolute or determinable, or if, by a disposition under this Act by a tenant in tail, an interest, charge, lien or incumbrance is created without a term of years absolute or determinable, or any greater estate for securing or raising the same, then such disposition shall be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interests, lien, charge or incumbrance, notwithstanding any intention to the contrary expressed or implied in the deed by which the disposition is effected. 10 Edw. VII. c. 52, s. 8.

PROTECTOR.

9. If at the time there is a tenant in tail of land under a settlement, and there is subsisting in the same land, or any part of it, under the same settlement, an estate for years, determinable on the dropping of a life or lives, or any greater estate, not being an estate for years, prior to the estate tail, then the person who is the owner of the prior estate, or the first of such prior estates, if more than one, then subsisting under the same settlement, or who would have been the

owner if no absolute disposition thereof had been made, the first of such prior estates, if more than one, being all for the purposes of this Act deemed the prior estate, shall be the protector of the settlement so far as regards the land in which such prior estate is subsisting, and shall, for all the purposes of this Act, be deemed the owner of such prior estate although the same may have been charged or incumbered either by the owner thereof or by the settlor or otherwise howsoever, and although the whole of the rents and profits are exhausted, or are required for the payment of the charges and incumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner; and an estate by the curtesy in respect of the estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement within the meaning of this section; and an estate by way of resulting use or trust to or for the settlor shall be deemed an estate under the same settlement within the meaning of this section. 10 Edw. VII. c. 52, s. 9.

10. Where two or more persons are owners, under a settlement within the meaning of this Act, of a prior estate the sole owner of which estate, if there had been only one, would, in respect thereof, have been the protector of such settlement, each of such persons, in respect of such undivided share as he could dispose of, shall, for all the purposes of this Act, be deemed the owner of a prior estate, and shall in exclusion of the other or others of them be the sole protector of such settlement to the extent of such undivided share. 10 Edw. VII. c. 52, s. 10.

Protector
in case of
joint owner-
ship of
prior estate.

11. Where a married woman would, if single, be the protector of a settlement in respect of a prior estate which is not thereby settled or agreed, or directed to be settled to her separate use, she and her husband together shall, in respect of such estate, be the protector of such settlement and shall be deemed one owner; but if such prior estate has by such settlement been settled or agreed, or directed to be settled to her separate use, or is, by *The Married Women's Property Act*, her separate estate, she alone in respect of such estate shall be the protector of such settlement. 10 Edw. VII. c. 52, s. 11.

When a married woman is the protector.
Rev. Stat.
c. 149.

12. Except in the case of a lease hereinafter provided for, where an estate is limited by a settlement, by way of confirmation, or where the settlement merely has the effect of restoring an estate, such estate shall, for the purpose of this Act, so far as regards the protector of the settlement be deemed an estate subsisting under such settlement. 10 Edw. VII. c. 52, s. 12.

As to estates confirmed or restored by settlement.

As to leases at
rent created by
settlement.

13. Where a lease at a rent is created or confirmed by a settlement, the person in whose favour such lease is created or confirmed shall not, in respect thereof, be the protector of such settlement. 10 Edw. VII. c. 52, s. 13.

Who may
not be
protector.

14. No woman in respect of her dower, and no bare trustee, heir, executor, administrator or assign, in respect of any estate taken by him as such shall be the protector of a settlement. 10 Edw. VII. c. 52, s. 14.

Who shall be
the protector
where the
owner of the
prior estate is,
by the last
two sections
excluded.

15. Where under a settlement there is more than one estate prior to an estate tail, and the person who is the owner, within the meaning of this Act, of such prior estate in respect of which, but for the last preceding two sections or one of them, he would have been the protector of the settlement, is by virtue of such sections, or either of them, excluded from being the protector, then the person, if any, who, if such estate did not exist, would be the protector of the settlement shall be such protector. 10 Edw. VII. c. 52, s. 15.

For protectors in cases of dispositions before July, 1846, and of settlements before January, 1834, see R.S.O. 1897, c. 122, ss. 17-19, not consolidated.

Power to any
settlor to
appoint
protector.

16. Any settlor entailing land may appoint, by the settlement by which the land is entailed, any number of persons *in esse*, not exceeding three, to be protector of the settlement in lieu of the person who would have been the protector if this section had not been enacted, and either for the whole or any part of the period for which such person might have continued protector; and, by means of a power to be inserted in such settlement, to perpetuate, during the whole or any part of such period, the protectorship of the settlement in any one person or number of persons *in esse* whom the donee of the power thinks proper, by deed, to appoint protector of the settlement in the place of any one person, or number of persons, who may die, or, by deed, relinquish his or their office of protector; and the person or persons so appointed shall, in case of there being no other person then protector of the settlement, be the protector, and shall, in case of there being any other person then protector of the settlement, be protector jointly with such other person; but the number of the persons to compose the protector by virtue or means of any such appointment shall never exceed three. 10 Edw. VII. c. 52, s. 16.

Registration
of deeds
appointing
protectors.

17.—(1) Every deed by which a protector is appointed under a power in a settlement, and every deed by which a protector relinquishes his office shall be void unless registered in the registry office of the registry division wherein the land referred to lies, within six months after the execution thereof.

(2) The person who, but for the next preceding section, ^{Who may be eligible as protector.} would have been sole protector of the settlement may be one of the persons to be appointed protector under that section, if the settlor thinks fit, and shall, unless otherwise directed by the settlor, act as sole protector, if the other persons constituting the protector have ceased to be so by death or relinquishment of the office by deed, and no other person has been appointed in their place. 10 Edw. VII. c. 52, s. 17.

18.—(1) If any person, protector of a settlement, ^{Supreme Court as protector in cases of disability.}

(a) Is a lunatic, idiot, or of unsound mind, whether he has or has not been so found; or

(b) Is convicted of treason or felony; or

(c) Not being the owner of a prior estate under a settlement is an infant; or,

(d) If it is uncertain whether he is living or dead,

the Supreme Court shall be the protector of the settlement in lieu of such person.

(2) If any settlor entailing land declares, in the settlement ^{Idem,} by which the land is entailed, that the person who, as owner ^{if no appointment.} of a prior estate under such settlement, would be entitled to be protector of the settlement shall not be the protector, and does not appoint any person to be protector in his stead, the Supreme Court shall, as to the land in which the prior estate is subsisting, be the protector of the settlement during the continuance of such estate.

(3) If in any other case there is subsisting under a settle- ^{Idem.} ment an estate prior to an estate tail under the same settlement, and such prior estate is sufficient to qualify the owner thereof to be protector of the settlement, and there happens at any time to be no protector of the settlement as to the land in which the prior estate is subsisting, the Supreme Court shall, while there is no such protector and the prior estate is subsisting, be the protector of the settlement as to such land. 10 Edw. VII. c. 52, s. 18.

19. If at the time when any person, actual tenant in tail ^{Requirement of consent of protector to disposition.} of land under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate tail, is desirous of making, under this Act, a disposition of the land entailed, there is a protector of such settlement, then the consent of such protector shall be requisite to enable such actual tenant in tail to dispose of the land entailed to the full extent to which he is hereinbefore authorized to dispose of the same; but such actual tenant in tail may, without such consent, make a disposition under this Act of the land entailed, which shall be good against all persons

who, by force of any estate tail vested in or which might be claimed by, or which, but for some previous act or default, would have been vested in or might have been claimed by the person making the disposition at the time of his making the same, may claim the land entailed. 10 Edw. VII. c. 52, s. 19.

In case of
conversion
into base fee.

20. Where an estate tail has been converted into a base fee, so long as there is a protector of the settlement by which the estate tail was created, the consent of such protector shall be requisite to enable the person who would have been tenant of the estate tail if the same had not been barred, to exercise, as to the land in respect of which there is such protector, the power of disposition hereinbefore contained. 10 Edw. VII. c. 52, s. 20.

Powers of
protector.

21. Any advice, shift, or contrivance by which it is attempted to control the protector of a settlement in giving his consent, or to prevent him in any way from using his absolute discretion in regard to his consent, and also any agreement entered into by the protector of a settlement to withhold his consent, shall be void; and the protector of a settlement shall not be deemed to be a trustee in respect of his power of consent; and no Court shall control or interfere to restrain the exercise of his power of consent or treat his giving consent as a breach of trust. 10 Edw. VII. c. 52, s. 21.

Exclusion of
certain rules
of equity.

22. The rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised shall not apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this Act. 10 Edw. VII. c. 52, s. 22.

Confirmation
of avoidable
estate by a
subsequent
disposition
under
this Act.

23.—(1) Where a tenant in tail of land under a settlement has created in such land, or any part thereof, a voidable estate in favour of a purchaser for valuable consideration and afterwards, by an assurance other than a lease not requiring registration under section 26, makes a disposition, under this Act, of the land in which such voidable estate has been created, or any part thereof, such disposition, whatever its object may be, and whatever may be the extent of the estate intended to be thereby created, shall, if made by the tenant in tail with the consent of the protector of the settlement, or by the tenant in tail alone, if there be no such protector, have the effect of confirming such voidable estate in the land thereby disposed of to its full extent as against all persons except those whose rights are saved by this Act.

Consent
of protector.

(2) If, at the time of making such disposition, there is a protector of the settlement, and such protector does not

consent to the disposition, and the tenant in tail is not without such consent capable under this Act of confirming the voidable estate to its full extent, then such disposition shall have the effect of confirming such voidable estate so far as such tenant in tail would then be capable under this Act of confirming the same without such consent.

(3) If such disposition is made to a purchaser for valuable consideration, not having express notice of the voidable estate, the voidable estate shall not be confirmed as against such purchaser and the person claiming under him. 10 Edw. VII. c. 52, s. 23. Exception.

24. If a base fee in any land and the remainder or reversion in fee in the same land are united in the same person, and there is no intermediate estate between the base fee and the remainder or reversion, the base fee shall not merge, but shall be *ipso facto* enlarged into as large an estate as the tenant in tail, with the consent of the protector, if any, might have created by any disposition under this Act, if such remainder or reversion had been vested in any other person. 10 Edw. VII. c. 52, s. 24. Enlargement of base fees when united with the immediate reversion or remainder.

25.—(1) Every disposition of land under this Act by a tenant in tail thereof shall be effected by some one of the assurances, not being a will, by which such tenant in tail could have made the disposition if his estate were an estate at law in fee simple absolute, and no disposition by a tenant in tail shall be of any force, under this Act, unless made or evidenced by deed. Methods whereby tenant in tail must make a disposition.

(2) No disposition by a tenant in tail resting only in contract, either expressed or implied, or otherwise, and whether supported by a valuable or meritorious consideration or not, shall be of any force, under this Act, notwithstanding such disposition is made or evidenced by deed. 10 Edw. VII. c. 52, s. 25. Invalidity under Act of mere contracts.

26. No assurance by which any disposition of land is effected under this Act by a tenant in tail thereof, except a lease for any term not exceeding 21 years, to commence from or within twelve months from the date of such lease when such a lease is at rack-rent or not less than five-sixth parts of rack-rent, and except a lease made under the powers conferred by section 33 of *The Settled Estates Act*, shall have any operation under this Act unless it is registered in the registry office of the registry division wherein the land referred to lies within six months after the execution thereof. 10 Edw. VII. c. 52, s. 26; 1 Geo. V. c. 17, s. 40. Necessity for registration of assurances by a tenant in tail other than certain leases.

27.—(1) The consent of a protector of a settlement to the disposition under this Act of a tenant in tail shall be given either by the same assurance by which the disposition When consent of protector to be given.

is effected or by a deed distinct from the assurance, and executed either on or at any time before the day on which the assurance is made, otherwise the consent shall be void.

Effect of
consent by
distinct deed.

(2) If the protector of a settlement gives his consent to the disposition of a tenant in tail by a distinct deed it shall be considered that such protector has given an absolute and unqualified consent, unless, in such deed, he refers to the particular assurance by which the disposition is effected, and confines his consent to the disposition thereby made.

Irrevocability
of a consent.

(3) The protector of a settlement who, under this Act, has given his consent to the disposition of a tenant in tail shall not revoke such consent.

A married
woman
protector.

(4) A married woman being, either alone or jointly with her husband, protector of a settlement may, under this Act, in the same manner as if she were a *feme sole*, give her consent to the disposition of a tenant in tail.

Necessity for
registration of
consent by
distinct deed.

(5) The consent of the protector of a settlement to the disposition of a tenant in tail shall, if given by a deed distinct from the assurance by which the disposition is effected, be void unless such deed is registered in the registry office of the registry division wherein the land referred to lies, either at or before the time of the registration of the assurance. 10 Edw. VII. c. 52, s. 27.

Equitable
jurisdiction of
the courts
excluded from
giving any
effect to dis-
positions in
tail, etc.

28.—(1) In the case of a disposition of land under this Act by the tenant in tail thereof, and in the case of a consent by the protector of a settlement to such a disposition, the equitable jurisdiction of the Courts in regard to the specific performance of contracts and the supplying of defects in the execution of the powers of disposition given by this Act to tenants in tail, or the powers of consent given by this Act to protectors of settlements, and the supplying under any circumstances of the want of execution of such powers of disposition and consent respectively, and in regard to giving effect in any other manner to any act or deed by a tenant in tail or protector of a settlement, which before the passing of *The Administration of Justice Act of 1873* would not, in a Court of Law, be an effectual disposition or consent within the meaning of this Act shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration or otherwise.

36 V. c. 8.

Idem.

(2) No disposition of land under this Act by a tenant in tail thereof in equity, and no consent by a protector of a settlement to such a disposition, shall be of any force unless such disposition or consent would have been, in case of an estate tail at law, before *The Administration of Justice Act of 1873*, an effectual disposition or consent within the meaning of this Act in a Court of Law. 10 Edw. VII. c. 52, s. 28.

29. Where the Supreme Court is the protector of a settlement such Court, while protector of the settlement, shall, on motion or petition in a summary way by a tenant in tail under such settlement, have full power to consent to a disposition, under this Act by such tenant in tail; and the disposition to be made by such tenant in tail upon such motion or petition shall be such as may be approved of by the Court, and the Court may make such orders in the matter as may be thought necessary; and if the Court, in lieu of any person is protector of a settlement, and there is another person protector of the same settlement jointly with such first mentioned person, the disposition by the tenant in tail, though approved of by the Court, shall not be valid unless such other person, being protector, consents thereto in the manner in which the consent of the protector is, by this Act, required to be given. 10 Edw. VII. c. 52, s. 29.

When the Supreme Court may consent to a disposition by a tenant in tail.

30. Where the Supreme Court is the protector of a settlement no document or instrument, as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition is made. 10 Edw. VII. c. 52, s. 30.

Evidence.

31. Land to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof is subject to be invested in the purchase of land to be settled so that any person, if the land were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of land to be settled so that any person, if the land were purchased, would have an estate tail therein, shall, for all the purposes of this Act, be treated as the land to be purchased, and be considered subject to the same estates as the land to be purchased would, if purchased, have been actually subject to; and all the previous sections in this Act, so far as circumstances will admit, shall, in the case of the land to be so sold, apply to such land in the same manner as if the land to be purchased with the money to arise from the sale were directed to be freehold, and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of land to be so settled, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold land, and such land were actually purchased and settled; except that, where under this section a disposition is to be made of leasehold land for years absolute or determinable, so circumstanced, or of money so circumstanced, such leasehold land or money shall, as to the person in whose favour or for whose benefit the disposition is made, be treated as personal estate, and the assurance by which the disposition of such leasehold land or money is effected shall be an assignment by deed which shall have no operation under this Act unless registered in the registry office of the registry division in which the land therein referred to lies within six months after the execution thereof. 10 Edw. VII. c. 52, s. 31.

Character of money subject to be invested in lands to be entailed.

CHAPTER 114.

An Act respecting the Partition and Sale of
Real Estate.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Partition Act*. 3-4 Geo. V. c. 23, s. 1.

Interpre-
tation.
Court.

2. In this Act,

“Court” shall mean the Supreme Court.

“Land.”

“Land” shall include lands, tenements, and hereditaments, and all estates and interests therein. 3-4 Geo. V. c. 23, s. 2.

Jurisdiction
of Court

3. In regard to the partition and sale of estates of joint-tenants, tenants in common and co-parceners, the Court, in addition to the powers hereinafter conferred, shall possess the same jurisdiction as by the laws of England on the 10th of August, 1850, was possessed by the Court of Chancery in England, and also as by the laws in force in Ontario was possessed by the Courts of King’s Bench and Common Pleas. 3-4 Geo. V. c. 23, s. 3.

PARTITION.

Who may be
compelled to
make parti-
tion or sale.

4. All joint tenants, tenants in common, and co-parceners, all dowresses, and parties entitled to dower, tenants by the curtesy, mortgagees or other creditors having liens on, and all parties interested in, to or out of, any land in Ontario, may be compelled to make or suffer partition or sale of the land, or any part thereof, whether the estate is legal and equitable or equitable only. 3-4 Geo. V. c. 23, s. 4.

Who may
take pro-
ceedings for
partition.

5.—(1) Any person interested in land in Ontario, or the guardian appointed by a Surrogate Court of an infant entitled to the immediate possession of any estate therein, may take proceedings for the partition of such land or for the sale thereof under the directions of the Court or of a Judge thereof if such sale is considered by the Court or Judge to be more advantageous to the parties interested.

(2) No such proceedings shall be taken until one year next after the decease of the testator or person dying intestate in whom the land was vested. 3-4 Geo. V. c. 23, s. 5. When proceedings may be commenced.

6.—(1) If any person interested in the land has not been heard of for three years or upwards, and it is uncertain whether such person is living or dead, the Court or Judge upon the application of anyone interested in the land may, on such terms and conditions as may be deemed proper, appoint a guardian to take charge of the interest of such person and of those who, in the event of his being dead, are entitled to his share or interest in the land. Appointment of guardian to estate of person unheard of for three years.

(2) The guardian shall, in the proceedings, represent such absent person and those who, should he be dead, are entitled to his share or interest in the land, and whether they or any of them are infants or otherwise under disability; and his acts in relation to such share or interest shall be binding on such absent person and all others claiming or entitled to claim under or through him, and shall be as valid as if done by him or them. Powers of such guardian.

(3) The Court upon proof of such absence of such person as affords reasonable ground for believing such person to be dead, upon the application of the guardian, or any one interested in the estate represented by the guardian, may deal with the estate or interest of such person, or the proceeds thereof, and may order payment of the proceeds, or the income or produce thereof, to the person who, in the event of such absent person being dead, appears to be entitled to the same. 3-4 Geo. V. c. 23, s. 6. Power of the Court to deal with the estate.

SALES.

7.—(1) In any action or proceeding for partition or administration, or in any action or proceeding in which a sale of land in lieu of partition is ordered, and in which the estate of any tenant in dower or tenant by the curtesy or for life is established, if the person entitled to the estate is a party, the Court or Judge shall determine whether the estate ought to be exempted from the sale or whether the same should be sold; and in making such determination regard shall be had to the interests of all the parties. Sales including estates in dower or by the curtesy or for life.

(2) If a sale is ordered including such estate, all the estate and interest of every such tenant shall pass thereby; and no conveyance or release to the purchaser shall be required from such tenant; and the purchaser, his heirs and assigns, shall hold the premises freed and discharged from all claims by virtue of the estate or interest of any such tenant, whether the same be to any undivided share or to the whole or any part of the premises sold. What to pass to purchaser.

Compensation to owners of particular estates.

(3) The Court may direct the payment of such sum in gross out of the purchase money to the person entitled to dower or estate by the curtesy or for life, as may be deemed, upon the principles applicable to life annuities, a reasonable satisfaction for such estate; or may direct the payment to the person entitled of an annual sum or of the income or interest to be derived from the purchase money or any part thereof, as may seem just, and for that purpose may make such order for the investment or other disposition of the purchase money or any part thereof as may be necessary. 3-4 Geo. V. c. 23, s. 7.

Determining value of claim to inchoate right of dower.

8. Where a married woman is a party to such action or proceeding in respect to an inchoate right of dower, the Court shall, in case of sale, determine the value of such right according to the principles applicable to deferred annuities and survivorships, and shall order the amount of such value to be paid; or shall order the payment to such married woman of an annual sum, or of such income or interest as is provided in the preceding section and such payment shall be a bar to any right or claim of dower. 3-4 Geo. V. c. 23, s. 8.

Effect upon persons under a disability.

9. A partition or sale made by the Court shall be as effectual for the apportioning or conveying away of the estate or interest of any married woman, infant or lunatic, party to the proceedings by which the sale or partition is made or declared, as of a person competent to act for himself. 3-4 Geo. V. c. 23, s. 9.

TRANSFER TO SUPREME COURT OF MONEY AND SECURITIES IN HANDS OF REAL REPRESENTATIVE.

Transmission of money by real representative.

10.—(1) All money and all securities for money and investments paid to or taken by the real representative in the course of any proceeding under the authority of any former Act now in or which shall hereafter come into the hands of such real representative shall be paid and transmitted by him without delay to the Accountant of the Supreme Court, together with an office copy of the order for partition or sale and report under which such money or securities have been paid or taken.

Duty of Accountant.

(2) Such money shall be dealt with by the Accountant in the same manner as it would be dealt with if it had been paid into court in a matter originally brought and carried on in the Supreme Court.

Vesting.

(3) All securities for money and investments so transmitted to the Accountant shall, without any formal or other transfer, be vested in the accountant and shall be dealt with by him in the same manner as they would be dealt with if taken in a proceeding originally brought and carried on in the Supreme Court. 3-4 Geo. V. c. 23, s. 10.

11. Chapter 123 of the Revised Statutes of Ontario, 1897, is repealed, but, subject to the next preceding section, all proceedings heretofore commenced under that Act, or under any Act for which the same was substituted, for the partition or sale of land, shall be carried on and completed and the land and the proceeds thereof shall be dealt with in all respects as if this Act had not been passed. 3-4 Geo. V. c. 23, s. 11.

CHAPTER 115.

An Act respecting Short Forms of Conveyances.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title. **1.** This Act may be cited as *The Short Forms of Conveyances Act*. 10 Edw. VII. c. 53, s. 1.
- Interpretation,
"Land." **2.** In this Act,
(a) "Land" shall include freehold tenements and hereditaments, whether corporeal or incorporeal, and any undivided part or share therein;
- "Party." (b) "Party" and "Parties" shall include a body politic or corporate, as well as an individual. 10 Edw. VII. c. 53, s. 2.
- Effect of deed made according to Schedule A and col. 1 of Schedule B. **3.** Where a deed of land made according to the form set forth in Schedule A, or any other deed of land expressed to be made in pursuance of this Act or referring thereto contains any of the forms of words contained in Column One of Schedule B, and distinguished by any number therein, such deed shall have the same effect as if it contained the form of words in Column Two of Schedule B, distinguished by the same number as is annexed to the form of words used in such deed; but it shall not be necessary, in any such deed, to insert any such number. 10 Edw. VII. c. 53, s. 3.
- Parties may substitute names for "grantor" or "grantee." **4.—(1)** Parties who use any of the forms in the first column of Schedule B may substitute for the words "Grantor" or "Grantee" any name or other designation, and in every such case a corresponding substitution shall be taken to be made in the corresponding form in the second column.
- May substitute feminine for masculine or plural for singular. **(2)** Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in any of the forms in the first column, and corresponding changes shall be taken to be made in the corresponding forms in the second column.
- May introduce exceptions. **(3)** Such parties may introduce into, or annex to, any of the forms in the first column any express exceptions from, or other express qualifications thereof respectively, and the

like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

(4) Such parties may add the name or other designation of any person or persons, or class or classes of persons, or any other words at the end of form two of the first column, so as thereby to extend the words thereof to the acts of any additional person or persons, or class or classes of persons, or of all persons whomsoever; and in every such case the covenants 2, 3 and 4, or such of them as may be employed in such deed, shall be taken to extend to the acts of the person or persons, class or classes of persons so named. 10 Edw. VII. c. 53, s. 4. May add names or designations.

5. Any deed or part of a deed which fails to take effect by virtue of this Act shall, nevertheless, be as effectual to bind the parties thereto as if this Act had not been passed. Effect of deeds failing to take effect under this Act. 10 Edw. VII. c. 53, s. 5.

[See also *The Conveyancing and Law of Property Act*, Rev. Stat. s. 15.] c. 109.

SCHEDULE A.

This Indenture made the _____ day of _____, one thousand nine hundred and _____, in pursuance of *The Short Forms of Conveyances Act*. Between *(here insert names of parties and recitals, if any)*, Witnesseth, that in consideration of _____ now paid by the said *(grantee)* to the said *(grantor)* the receipt whereof is hereby by him acknowledged, he the said *(grantor)* doth grant unto the said *(grantee)* in fee simple *(or otherwise as the case may be)* all, etc., *(parcels)* *(Here insert covenants, or any other provisions.)*

In witness whereof the said parties hereto have hereunto set their hands and seals.

10 Edw. VII. c. 53, Sched. A.

SCHEDULE B.

COLUMN ONE.

COLUMN TWO

1. The said grantor covenants with the said grantee. 1. And the said grantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, with and to the said grantee, his heirs, executors, administrators and assigns, in manner following, that is to say :

2. That he has the right to convey the said lands to the said grantee notwithstanding any act of the said grantor. 2. That for and notwithstanding any act, deed, matter or thing by the said grantor done, executed, committed, or knowingly or wilfully permitted or suffered to the contrary, he, the said grantor, now hath in himself good right, full power and absolute authority to convey the said lands, and other the premises hereby conveyed, or intended so to be, with their and every of their appurtenances, unto the

COLUMN ONE.

COLUMN TWO

said grantee, in manner aforesaid, and according to the true intent of these presents.

3. And that the said grantee shall have quiet possession of the said lands.

3. And that it shall be lawful for the said grantee, his heirs, executors, administrators and assigns, from time to time and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess and enjoy the said lands and premises hereby conveyed, or intended so to be, with their and every of their appurtenances; and to have, receive and take the rents, issues and profits thereof, and of every part thereof to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from or by him the said grantor, or his heirs, or any person claiming or to claim, by, from, under or in trust for him, them or any of them.

4. Free from all incumbrances.

4. And that free and clear and freely and absolutely acquitted, exonerated and for ever discharged or otherwise by the said grantor or his heirs well and sufficiently saved, kept harmless and indemnified of, from and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, re-entry, and any and every other estate, title, charge, trouble and incumbrance whatsoever, made, executed, occasioned or suffered by the said grantor or his heirs, or by any person claiming, or to claim, by, from, under or in trust for him, them or any of them.

5. And the said grantor covenants with the said grantee that he will execute such further assurances of the said lands as may be requisite.

5. And the said grantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise, and agree with and to the said grantee, his heirs, executors, administrators and assigns, that he the said grantor, his heirs, executors and administrators, and all and every other person who-soever having or claiming, or who shall or may hereafter have or claim, any estate, right, title or interest whatsoever in, to, or out of the said lands and premises hereby conveyed, or intended so to be, or any of them, or any part thereof, by, from, under or in trust for him, them, or any of them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said grantee, his heirs, executors, administrators or assigns, make, do, execute, or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices, conveyances and assurances in the law whatsoever, for the better, more perfectly, and absolutely conveying and assuring the said lands and premises hereby conveyed, or intended so to be, and every part thereof, with their appurtenances, unto the said grantee, his heirs, executors, admin-

COLUMN ONE.

COLUMN TWO.

istrators and assigns, in manner aforesaid as by the said grantee, his heirs, executors, administrators or assigns, his or their counsel in the law shall be reasonably devised, advised or required, so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors or administrators only, and so as no person who shall be required to make or execute such assurances shall be compellable for the making or executing thereof, to go or travel from his usual place of abode.

6. And the said grantor covenants with the said grantee that he will produce the title deeds enumerated hereunder, and allow copies to be made of them, at the expense of the said grantee.

6. And the said grantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said grantee, his heirs, executors, administrators and assigns, that the said grantor and his heirs shall and will, unless prevented by fire or other inevitable accident, from time to time, and at all times hereafter, at the request, costs and charges of the said grantee, his heirs, executors, administrators or assigns, or his or their solicitor, agent or counsel, at any trial or hearing in any action or otherwise, as occasion shall require, produce all and every or any deed, instrument or writing hereunder written, for the manifestation, defence and support of the estate, title and possession of the said grantee, his heirs, executors, administrators and assigns, in or to the said lands and premises hereby conveyed, or intended so to be, and at the like request, costs and charges, shall and will make and deliver, or cause to be made and delivered, true and attested or other copies or abstracts of the same deeds, instruments and writings respectively, or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds, by the said grantee, his heirs, executors, administrators, or assigns, or such person as he or they shall for that purpose direct and appoint.

7. And the said grantor covenants with the said grantee that he has done no act to incumber the said lands.

7. And the said grantor, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree, with and to the said grantee, his heirs, executors, administrators and assigns, that he hath not at any time heretofore made, done, committed, executed, or wilfully or knowingly suffered any act, deed, matter or thing whatsoever, whereby or by means whereof the said lands and premises hereby conveyed, or intended so to be, or any part or parcel thereof are, is or shall or may be in anywise impeached, charged, affected or incumbered in title, estate or otherwise howsoever.

COLUMN ONE.

COLUMN TWO.

8. And the said grantor releases to the said grantee all his claims upon the said lands.

8. And the said grantor hath released, remised and for ever quitted claim, and by these presents doth release, remise and for ever quit claim, unto the said grantee, his heirs, executors, administrators and assigns, all, and all manner of right, title, interest, claim and demand whatsoever, in to and out of the said lands and premises hereby granted, or intended so to be, and every part and parcel thereof, so as that neither he nor his heirs, executors, administrators or assigns shall nor may, at any time hereafter, have claim, pretend to, challenge or demand the said lands and premises or any part thereof, in any manner howsoever, but the said grantee, his heirs, executors, administrators and assigns, and the same lands and premises shall from henceforth forever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said grantor might or could have upon him in respect of the said lands, or upon the said lands.

9. And the said wife of the said grantor hereby bars her dower in the said lands.

9. And the said wife of the said grantor for and in consideration of the sum of one dollar of lawful money of Canada, to her in hand paid by the said grantee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said grantee, his heirs, executors, administrators and assigns, all her dower and right and title which, in the event of her surviving her said husband, she might or would have to dower, in, to or out of the lands and premises hereby conveyed or intended so to be.

10 Edw. VII. c. 53, Sched. B.

CHAPTER 116.

An Act respecting Short Forms of Leases.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Short Forms of Leases* Short title.
Act. 10 Edw. VII. c. 54, s. 1.

2. Where a lease, under seal made according to the form set forth in Schedule A, or any other such lease expressed to be made in pursuance of this Act or referring thereto, contains any of the forms of words contained in Column One of Schedule B, and distinguished by any number therein, such lease shall have the same effect as if it contained the form of words contained in Column Two of Schedule B, distinguished by the same number as is annexed to the form of words used in such lease; but it shall not be necessary, in any such lease, to insert any such number. 10 Edw. VII. c. 54, s. 2. Effect of lease made according to Schedule A and Col. 1 of Schedule B.

3—(1) Parties who use any of the forms in the first column of Schedule B, may substitute for the words "Lessee" or "Lessor" any name or other designation, and in every such case a corresponding substitution shall be taken to be made in the corresponding form in the second column. Parties may substitute any name or designation.

(2) Such parties may substitute the feminine gender for the masculine, or the plural number for the singular in the forms in the first column, and corresponding changes shall be taken to be made in the corresponding forms in the second column. May substitute feminine for masculine or plural for singular.

(3) Such parties may introduce into or annex to any of the forms in the first column any express exceptions from or express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column. May introduce exceptions.

(4) Where the premises demised are of freehold tenure the covenants 2 to 9 shall be taken to be made with and the proviso 12 to apply to the heirs and assigns of the lessor; and where the premises demised are of leasehold tenure such covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators and assigns. Application of covenants to heirs and assigns.

"Lessor,"
meaning of.

(5) Where the word "lessor" occurs in the second column it shall, when the premises demised are of freehold tenure, include the heirs, executors, administrators and assigns of the lessor, and when the premises demised are of leasehold tenure it shall include the executors, administrators and assigns of the lessor, and where the word "lessee" occurs in the second column it shall include the executors, administrators and assigns of the lessee. 10 Edw. VII, c. 54, s. 3.

Effect of
leases failing
to take effect
under this
Act.

4. Any lease or part of a lease which fails to take effect by virtue of this Act shall nevertheless be as effectual to bind the parties thereto as if this Act had not been passed. 10 Edw. VII. c. 54, s. 4.

Covenants to
run with land.

5. Unless the contrary is expressly stated in the lease all covenants not to assign or sub-let without leave entered into by a lessee in any lease under this Act shall run with the land demised, and shall bind the executors, administrators and assigns of the lessee whether mentioned in the lease or not, unless it is by the terms of the lease otherwise expressly provided, and the proviso for re-entry contained in Schedule B shall, when inserted in a lease, apply to a breach of either an affirmative or negative covenant. 10 Edw. VII. c. 54, s. 5.

SCHEDULE A.

FORM OF LEASE.

This indenture, made the _____ day of _____ one thousand nine hundred and _____ in pursuance of *The Short Forms of Leases Act*, between _____, of the first part, and _____, of the second part, Witnesseth, that in consideration of the rents, covenants and agreements, hereinafter reserved and contained on the part of the lessee, the lessor doth demise and lease unto the lessee, his executors, administrators and assigns all that (*here insert a description of the premises with sufficient certainty*).

To have and to hold the said demised premises for and during the term of _____, to be computed from the _____ day of _____, one thousand nine hundred and _____, and from thenceforth next ensuing and fully to be complete and ended.

Yielding and paying therefor yearly and every year during the said term unto the said lessor, his (or their) heirs, executors, administrators, or assigns, the sum of _____, to be payable on the following days and times, that is to say (on, etc.), the first of such payments to become due and be made on the day of _____ next, (*here insert covenants or any other provisions*). In witness whereof, etc.

10 Edw. VII. c. 54, Sched. A.

SCHEDULE B.

COLUMN ONE.

COLUMN TWO.

1. The said lessee covenants with the said lessor.

1. And the said lessee doth hereby covenant with the said lessor in manner following, that is to say:

2. To pay rent.

2. That he, the said lessee, will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever.

3. And to pay taxes, except for local improvements.

3. And also will pay all taxes, rates, duties and assessments whatsoever, whether municipal, parliamentary or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof, except municipal taxes for local improvements or works assessed upon the property benefited thereby.

4. And to repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

4. And also will, during the said term, well and sufficiently repair, maintain, amend and keep the said demised premises with the appurtenances in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the said term shall be erected and made by the lessor, when, where, and so often as need shall be, reasonable wear and tear and damage by fire lightning and tempest only excepted.

5. And to keep up fences..

5. And also will, from time to time, during the said term, keep up the fences and walls of or belonging to the said premises, and make anew any parts thereof that may require to be new-made in a good and husband-like manner and at proper seasons of the year.

6. And not to cut down timber.

6. And also will not at any time during the said term hew, fell, cut down or destroy, or cause or knowingly permit or suffer to be hewed, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs, or firewood, or for the purpose of clearance as herein set forth.

7. And that the said lessor may enter and view state of repair, and that the said lessee will repair according to notice in writing, reasonable wear and tear, and damage by fire, lightning and tempest only excepted.

7. And that it shall be lawful for the lessor and his agents, at all reasonable times during the said term, to enter the said demised premises to examine the condition thereof; and further, that all want of reparation that upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee will, within three calendar months next after such notice, well and sufficiently repair and make good accordingly, reasonable wear and tear and damage by fire, lightning and tempest only excepted.

COLUMN ONE.

COLUMN TWO.

8. And will not assign or sub-let without leave.

8. And also that the lessee shall not, nor will during the said term, assign, transfer or set over or otherwise by any act or deed procure the said premises or any of them to be assigned, transferred, set over or sub-let unto any person or persons whomsoever without the consent in writing of the lessor first had and obtained.

9. And that he will leave the premises in good repair reasonable wear and tear and damage by fire, lightning and tempest only excepted.

9. And further, that the lessee will, at the expiration, or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised with the appurtenances, together with all the buildings, erections and fixtures erected or made by the lessor thereon, in good and substantial repair and condition, reasonable wear and tear, and damage by fire, lightning and tempest only excepted.

10. Provided, that the lessee may remove his fixtures.

10. Provided, and it is hereby expressly agreed that the lessee may at or prior to the expiration of the term hereby granted, take remove and carry away from the premises hereby demised all fixtures, fittings, plant, machinery, utensils, shelving, counters, safes or other articles upon the said premises in the nature of trade or tenants' fixtures or other articles belonging to or brought upon the said premises by the said lessee, but the lessee shall in such removal do no damage to the said premises, or shall make good any damage which he may occasion thereto.

11. Provided, that in the event of fire, lightning or tempest, rent shall cease until the premises are rebuilt.

11. Provided, and it is hereby expressly agreed, that in case the premises hereby demised or any part thereof shall, at any time during the said term, be burned down or damaged by fire, lightning or tempest so as to render the same unfit for the purposes of the said lessee, then and so often as the same shall happen, the rent hereby reserved, or a proportionate part thereof, according to the nature and extent of the injuries sustained shall abate, and all or any remedies for recovery of said rent or such proportionate part thereof shall be suspended until the said premises shall have been rebuilt or made fit for the purposes of the said lessee.

12. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants.

12. Provided, and it is hereby expressly agreed, that if and whenever the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand shall have been made thereof, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the lessee, then and in either of such cases it shall be lawful for the lessor at any time hereafter, into and upon the said demised premises or any part thereof, in the name of the whole to re-enter, and the same to have again, repossess and enjoy, as of his

COLUMN ONE.

COLUMN TWO.

former estate; anything hereinafter contained to the contrary notwithstanding.

13. The said lessor covenants with the said lessee for quiet enjoyment. 13. And the lessor doth hereby covenant with the lessee, that he paying the rent hereby reserved and performing the covenants hereinbefore on his part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the lessor, or any other person or persons lawfully claiming by, from or under him.

10 Edw. VII. c. 54, Sched. B.

CHAPTER 117.

An Act respecting Short Forms of Mortgages.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Short Forms of Mortgages Act*. 10 Edw. VII. c. 55, s. 1.

Interpretation. **2.** In this Act,

“Land.” (a) “Land” shall include freehold tenements and hereditaments, whether corporeal or incorporeal, and any undivided part or share therein;

“Party.” (b) “Party” and “Parties” shall include a body politic or corporate as well as an individual. 10 Edw. VII. c. 55, s. 2.

Effect of mortgage made according to Schedule A and Col. 1 of Schedule B.

3.—(1) Where a mortgage of land, made according to the form set forth in Schedule A, or any other mortgage of land expressed to be made in pursuance of this Act, or referring thereto, contains any of the forms of words contained in Column One of Schedule B, and distinguished by any number therein, such mortgage shall have the same effect as if it contained the form of words in Column Two of Schedule B, distinguished by the same number as is annexed to the form of words used in such mortgage; but it shall not be necessary in any such mortgage to insert any such number.

(2) Where a blank occurs in any of the forms in Column Two such form shall be read as if it were filled in with the words which supply the place of the blank in the corresponding form in Column One. 10 Edw. VII. c. 55, s. 3.

Parties may substitute names or designations.

4.—(1) Parties who use any of the forms in the first column of Schedule B may substitute for the words “Mortgagor” or “Mortgagee” any name or other designation; and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

And feminine for masculine gender or plural for singular.

(2) Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in any of the forms in the first column; and corresponding changes shall be taken to be made in the corresponding forms in the second column.

(3) Such parties may introduce into or annex to any of the forms in the first column any express exceptions from or other express qualifications thereof respectively; and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column. 10 Edw. VII. c. 55, s. 4.

And may introduce exceptions or qualifications.

5. Any such mortgage, or part of such mortgage, which fails to take effect by virtue of this Act shall nevertheless be as effectual to bind the parties thereto as if this Act had not been passed. 10 Edw. VII. c. 55, s. 5.

Mortgages not taking effect under this Act how far valid.

[See also *The Conveyancing and Law of Property Act*, Rev. Stat. c. 109, s. 15.]

SCHEDULE A.

FORM OF MORTGAGE.

This Indenture, made the _____ day of _____, one thousand nine hundred and _____, in pursuance of *The Short Forms of Mortgages Act*, between (here insert the names of parties and recitals, if any). Witnesseth, that in consideration of _____ of lawful money of Canada, now paid by the said mortgagee to the said mortgagor, the receipt whereof is hereby acknowledged, the said mortgagor doth grant and mortgage unto the said mortgagee, his heirs, executors, administrators and assigns for ever, all (parcels).

(Here insert provisoes, covenants or other provisions.)

In witness whereof the said parties hereto have hereunto set their hands and seals.

10 Edw. VII. c. 55, Sched. A.

SCHEDULE B.

COLUMN ONE

COLUMN TWO.

1. And the said wife of the said mortgagor hereby bars her dower in the said lands.

1. And the said wife of the said mortgagor for and in consideration of the sum of one dollar of lawful money of Canada, to her in hand paid by the said mortgagee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said mortgagee, his heirs, executors, administrators and assigns, all her dower, and right and title which, in the event of her surviving her said husband, she might or would have to dower, in, to, or out of the lands and premises hereby conveyed or intended so to be.

2. Provided this mortgage to be

2. Provided always, and these presents are upon this express condition, that if the said mortgagor, his heirs, executors, administra-

COLUMN ONE.

COLUMN TWO.

void on payment of
of law-
ful money of Can-
ada, with interest
at
cent., as follows:
and taxes
and performance
of statute labour.

tors or assigns, or any of them, do and shall
well and truly pay or cause to be paid unto the
said mortgagee, his executors, administrators
or assigns, the just and full sum of
of lawful money of Canada,
with interest thereon, at the rate of
per cent. per annum, on the days and
times, and in manner following that is to say:
without any deduction, defalcation or abate-
ment out of the same for or in respect of any
taxes, rates levies, charges, rents, assessments,
statute labour or other impositions whatsoever
already rated, charged, assessed or imposed or
hereafter to be rated, charged, assessed or im-
posed by authority of Parliament or of the Leg-
islature, or otherwise howsoever, on the said
lands and tenements, hereditaments and prem-
ises with the appurtenances, or on the said
mortgagee, his heirs, executors, administrators
or assigns, in respect of the said premises, or of
the said money or interest, or any other matter
or thing relating to these presents, and until
such default as aforesaid shall and will well
and truly pay, do and perform or cause or pro-
cure to be paid, done and performed, all matters
and things in this proviso hereinbefore set
forth, then these presents and everything in
the same contained shall be absolutely null
and void.

3. The said mort-
gagor covenants
with the said
mortgagee.

3. And the said mortgagor doth hereby, for
himself, his heirs, executors and administra-
tors, covenant, promise and agree to and with
the said mortgagee, his heirs, executors, ad-
ministrators and assigns, in manner following,
that is to say:

4. That the mort-
gagor will pay the
mortgage money
and interest, and
observe the above
proviso.

4. That the said mortgagor, his heirs, ex-
ecutors, administrators or some or one of them
shall and will well and truly pay or cause to
be paid unto the said mortgagee, his executors,
administrators or assigns, the said sum of
money in the above proviso mentioned,
with interest for the same as aforesaid, at the
days and times and in the manner above limited
for payment thereof, and shall and will in
everything well, faithfully and truly do, ob-
serve perform, fulfil and keep all and singular
the provisions, agreements and stipulations in
the said above proviso particularly set forth,
according to the true intent and meaning of
these presents, and of the said above proviso.

5. That the mort-
gagor has a good
title in fee simple
to the said lands.

5. And also, that the said mortgagor, at the
time of the sealing and delivery hereof, is, and
stands solely, rightfully and lawfully seized of
a good, sure, perfect, absolute and indefeasible
estate of inheritance, in fee simple, of and in
the lands, tenements hereditaments and all
and singular other the premises hereinbefore
described, with their and every of their ap-
purtenances and of and in every part and

COLUMN ONE.

COLUMN TWO.

parcel thereof without any manner of trusts, reservations, limitations, provisoes or conditions, except those contained in the original grant thereof from the Crown or any other matter or thing to alter, charge, change, incumber or defeat the same.

6. And that he has the right to convey the said lands to the said mortgagee.

6. And also, that the said mortgagor now hath in himself good right, full power and lawful and absolute authority to convey the said lands, tenements, hereditaments, and all and singular other the premises hereby conveyed or hereinbefore mentioned or intended so to be, with their and every of their appurtenances unto the said mortgagee, his heirs, executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents.

7. And that on default the mortgagee shall have quiet possession of the said lands.

7. And also, that from and after default shall happen to be made of or in the payment of the said sum of money, in the said above proviso mentioned, or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents, and of the said proviso, then, and in every such case, it shall and may be lawful to and for the said mortgagee, his heirs, executors administrators and assigns, peaceably and quietly to enter into, have, hold, use, occupy, possess and enjoy the aforesaid lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, with their appurtenances, without the let, suit, hindrance, interruption or denial of him the said mortgagor, his heirs, executors, administrators or assigns or any other person or persons whomsoever.

8. Free from all incumbrances.

8. And that free and clear and freely and clearly acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due or payable upon or in respect of the said lands, tenements, hereditaments and premises or any part thereof, and of and from all former conveyances, mortgages, rights, annuities, debts, executions and recognizances, and of and from all manner of other charges or incumbrances whatsoever.

9. And that the said mortgagor will execute such further assurances of the said lands as may be requisite.

9. And also, that from and after default shall happen to be made of or in the payment of the said sum of money in the said proviso mentioned, or the interest thereof, or any part of such money or interest or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents and of

COLUMN ONE.

COLUMN TWO.

the said proviso, then and in every such case the said mortgagor, his heirs, executors, administrators and assigns and all and every other person or persons whosoever having, or lawfully claiming, or who shall or may have or lawfully claim any estate, right, title, interest or trust of, in, to or out of the lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, with the appurtenances or any part thereof, by, from, under or in trust for him the said mortgagor, his heirs, executors, administrators, or assigns shall and will, from time to time, and at all times thereafter, at the proper costs and charges of the said mortgagee, his heirs, executors, administrators and assigns, make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, devices, conveyances, and assurances in the law for the further better and more perfectly and absolutely conveying and assuring the said lands, tenements, hereditaments and premises, with the appurtenances, unto the said mortgagee, his heirs, executors, administrators and assigns, as by the said mortgagee, his heirs, executors, administrators or assigns, or his or their counsel learned in the law shall or may be lawfully and reasonably devised, advised, or required, but so as no person who shall be required to make or execute such assurances shall be compelled, for the making or executing thereof, to go or travel from his usual place of abode.

10. And that the said mortgagor will produce the title deeds enumerated hereunder, and allow copies to be made at the expense of the mortgagee.

10. And also, that the said mortgagor, his heirs, executors, administrators, and assigns shall and will, unless prevented by fire or inevitable accident, from time to time, and at all times hereafter, at the request and proper costs and charges in the law of the said mortgagee, his heirs, executors, administrators, or assigns at any trial or hearing in any action or otherwise as occasion shall require, produce all, every or any deed, instrument or writing hereunder written for the manifestation, defence and support of the estate, title and possession of the said mortgagee, his heirs, executors, administrators and assigns, of, in, to or out of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, and at the like request, costs and charges shall and will make and deliver, or cause or procure to be made and delivered, unto the said mortgagee, his heirs, executors, administrators and assigns, true and attested or other copies or abstracts of the same deeds, instruments and writings respectively, or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds by the said mortgagee, his heirs, executors, administrators and assigns.

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COLUMN TWO.

11. And that the said mortgagor has done no act to incumber the said lands.

11. And also that the said mortgagor hath not at any time heretofore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, or any part or parcel thereof, are, is or shall or may be in any wise impeached, charged, affected or incumbered in title, estate or otherwise howsoever.

12. And that the said mortgagor will insure the buildings on the said lands to the amount of not less than of lawful money of Canada.

12. And also that the said mortgagor or his heirs, executors, administrators or assigns shall and will forthwith insure unless already insured, and during the continuance of this security keep insured against loss or damage by fire, in such proportions upon each building as may be required by the said mortgagee his heirs, executors, administrators or assigns, the messuages and buildings erected on the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, in the sum of of lawful money of Canada, at the least, in some insurance office to be approved of by the said mortgagee, his heirs, executors, administrators or assigns, and pay all premiums and sums of money necessary for such purpose, as the same shall become due, and will on demand assign, transfer and deliver over unto the said mortgagee, his heirs, executors, administrators or assigns, the policy or policies of insurance, receipt or receipts thereto appertaining; and if the said mortgagee, his heirs, executors, administrators or assigns, shall pay any premiums or sums of money for insurance of the said premises or any part thereof, the amount of such payment shall be added to the debt hereby secured, and shall bear interest at the same rate from the time of such payments, and shall be payable at the time appointed for the then next ensuing payment of interest on the said debt.

13. And the said mortgagor doth release to the said mortgagee all his claims upon the said lands subject to the said proviso.

13. And the said mortgagor hath released, remised and for ever quitted claim, and by these presents doth release, remise, and for ever quit claim unto the said mortgagee, his heirs, executors, administrators and assigns, all and all manner of right, title, interest, claim and demand whatsoever, of, unto and out of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, and every part and parcel thereof, so as that neither the said mortgagor, his heirs, executors, administrators or assigns, shall or may at any time hereafter have, claim, pretend to, challenge or demand the said lands, tenements, hereditaments and premises, or any part thereof, in any manner howsoever, subject always to the said above proviso; but the said mortgagee, his heirs, executors, administrators or assigns, and the said lands, tenements, hereditaments and premises, subject as

COLUMN ONE.

COLUMN TWO.

aforsaid, shall from henceforth for ever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said mortgagor, his heirs, or assigns, might or could have upon the said mortgagee, his heirs, executors, administrators or assigns, in respect of the said lands, tenements, hereditaments and premises, or upon the said lands, tenements, hereditaments and premises.

14. Provided, that the said mortgagee on default of payment for

may on notice enter on and lease or sell the said lands.

14. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that if the said mortgagor, his heirs, executors, or administrators, shall make default in any payment of the said money or interest or any part of either of the same, according to the true intent and meaning of these presents, and of the proviso in that behalf hereinbefore contained, and shall have thereafter elapsed without such payment being made (of which default, as also of the continuance of the said principal money and interest, or some part thereof, on this security, the production of these presents shall be conclusive evidence), it shall and may be lawful to and for the said mortgagee, his heirs, executors administrators or assigns, after giving written notice to the said mortgagor, his heirs, executors, administrators or assigns, of his or their intention in that behalf, either personally or at his or their usual or last place of residence within this Province not less than previous, without any further consent or concurrence of the said mortgagor, his heirs, executors, administrators or assigns, to enter into possession of the said lands, tenements, hereditaments and premises hereby conveyed, or mentioned or intended so to be, and to receive and take the rents, issues and profits thereof, and whether in or out of possession of the same, to make any lease or leases thereof, or of any part thereof as he or they shall think fit, and also to sell and absolutely dispose of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, or any part or parts thereof, with the appurtenances, by public auction or private contract, or partly by public auction and partly by private contract, as to him or them shall seem meet, and to convey and assure the same when so sold unto the purchaser or purchasers thereof, his or their heirs, or assigns, or as he or they shall direct and appoint and to execute and do all such assurances, acts, matters and things as may be found necessary for the purposes aforesaid, and the said mortgagee, his heirs, executors, administrators or assigns shall not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid unless the same shall happen by reason of his or their wilful neglect or default; and it is hereby further agreed between the parties to these

COLUMN ONE.

COLUMN TWO.

presents, that, until such sale or sales shall be made as aforesaid, the said mortgagee, his heirs, executors, administrators, or assigns shall and will stand and be possessed of and interested in the rents and profits of the said lands, tenements, hereditaments and premises, in case he or they shall take possession of the same on any default as aforesaid, and after such sale or sales shall stand and be possessed of and interested in the moneys to arise and be produced by such sale or sales, or which shall be received by the mortgagee, his heirs, executors, administrators or assigns, by reason of any insurance upon the said premises or any part thereof, upon trust in the first place to pay and satisfy the costs and charges of preparing for and making sales, leases and conveyances as aforesaid, and all other costs and charges, damages and expenses which the said mortgagee, his heirs, executors, administrators or assigns, shall bear, sustain, or be put to for taxes, rents, insurances and repairs, and all other costs and charges which may be incurred in and about the execution of any of the trusts in him or them hereby reposed, and in the next place to pay and satisfy the principal sum of money and interest hereby secured or mentioned or intended so to be or so much thereof as shall remain due and unsatisfied up to and inclusive of the day whereon the said principal sum shall be paid and satisfied; and after full payment and satisfaction of all such sums of money and interest as aforesaid upon this further trust that the said mortgagee, his heirs, executors, administrators or assigns, do and shall pay the surplus, if any, to the said mortgagor, his heirs, executors, administrators or assigns, or as he or they shall direct and appoint, and shall also, in such event, at the request, costs and charges in the law of the said mortgagor, his heirs, executors, administrators or assigns, convey and assure unto the said mortgagor, his heirs, executors, administrators or assigns, or to such person or persons as he or they shall direct and appoint, all such parts of the said lands, tenements, hereditaments and premises as shall remain unsold for the purposes aforesaid, freed and absolutely discharged of and from all estate, lien, charge and incumbrance whatsoever by the said mortgagee, his heirs, executors, administrators or assigns, in the meantime, but so as no person who shall be required to make or execute any such assurances, shall be compelled for the making thereof to go or travel from his usual place of abode: Provided always, and it is hereby further declared and agreed by and between the parties to these presents, that notwithstanding the power of sale and other the powers and provisions contained in these presents, the said mortgagee, his heirs, executors, administrators or assigns, shall have and be

COLUMN ONE.

COLUMN TWO.

entitled to his right of foreclosure of the equity of redemption of the said mortgagor, his heirs, executors, administrators and assigns in the said lands, tenements, hereditaments and premises as fully and effectually as he or they might have exercised and enjoyed the same in case the power of sale, and the other former provisoes and trusts incident thereto had not been herein contained.

15. Provided that the mortgagee may distrain for arrears of interest.

15. And it is further covenanted, declared and agreed by and between the parties to these presents, that if the said mortgagor, his heirs, executors, or administrators, shall make default in payment of any part of the said interest at any of the days or times hereinbefore limited for the payment thereof, it shall and may be lawful for the said mortgagee, his heirs, executors, administrators or assigns, to distrain therefor upon the said lands, tenements, hereditaments and premises, or any part thereof, and, by distress warrant, to recover by way of rent reserved, as in the case of a demise, of the said lands, tenements, hereditaments and premises, so much of such interest as shall, from time to time, be, or remain in arrear and unpaid, together with all costs, charges and expenses attending such levy or distress, as in like cases of distress for rent.

16. Provided that in default of the payment of the interest hereby secured, the principal hereby secured shall become payable.

16. Provided always, and it is hereby further expressly declared and agreed by and between the parties to these presents, that if any default shall at any time happen to be made of or in the payment of the interest money hereby secured or mentioned or intended so to be, or any part thereof, then and in such case the principal money hereby secured or mentioned, or intended so to be, and every part thereof, shall forthwith become due and payable in like manner and with the like consequences and effects to all intents and purposes whatsoever, as if the time herein mentioned for payment of such principal money had fully come and expired, but that in such case the said mortgagor, his heirs, executors, administrators or assigns, shall on payment of all arrears under these presents, with lawful costs and charges in that behalf, at any time before any judgment in the premises recovered or within such time as, by the practice of the Supreme Court, relief therein could be obtained be relieved from the consequences of non-payment of so much of the money secured by these presents, or mentioned, or intended so to be, as may not then have become payable by reason of lapse of time.

17. Provided that until default of payment the mortgagor shall have

17. And provided also, and it is hereby further expressly declared and agreed by and between the parties to these presents, that until default shall happen to be made of or in the payment of the said sum of money hereby se-

COLUMN ONE.

COLUMN TWO.

quiet possession of the said lands.

cured or mentioned, or intended so to be, or the interest thereof, or any part of either of the same, or the doing, observing, performing, fulfilling or keeping some one or more of the provisions, agreements or stipulations herein set forth, contrary to the true intent and meaning of these presents, it shall and may be lawful to and for the said mortgagor his heirs, executors, administrators and assigns, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said lands, tenements, hereditaments, and premises hereby conveyed or mentioned, or intended so to be, with their and every of their appurtenances, and receive and take the rents, issues and profits thereof to his and their own use and benefit, without let, suit, hindrance, interruption, or denial of or by the said mortgagee, his heirs, executors, administrators or assigns, or of or by any other person or persons whomsoever lawfully claiming, or who shall, or may lawfully claim by, from, under or in trust for him, her, them or any or either of them.

10 Edw. VII. c. 55, Sched. B.

CHAPTER 118.

An Act respecting Accidental Fires.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

1. This Act may be cited as *The Accidental Fires Act*.
1 Geo. V. c. 19, s. 1.

No action for
damages from
accidental fire.

Imp. Act,
14 Geo. III.
c. 78, s. 86.

2. No action shall be brought against any person in whose house or building or on whose land any fire shall accidentally begin, nor shall any recompense be made by him for any damage suffered thereby; but no contract or agreement made between landlord and tenant shall be hereby defeated or made void. 1 Geo. V. c. 19, s. 2.

2. *INTESTATE SUCCESSION.*

CHAPTER 119.

An Act respecting the Devolution and Distribution of Estates.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Devolution of Estates Act*. Short title.
10 Edw. VII. c. 56, s. 1.

2. In this Act, Interpretation.

(a) "Lunatic" shall include an idiot and a person of unsound mind.

(b) "Personal representative" shall mean and include an executor, an administrator, and an administrator with the will annexed. 10 Edw. VII. c. 56, s. 2.

3.—(1) All real and personal property which is vested in any person without a right in any other person to take by survivorship shall, on his death, whether testate or intestate, and notwithstanding any testamentary disposition, devolve to and become vested in his personal representative from time to time as trustee for the persons by law beneficially entitled thereto and, subject to the payment of his debts, and so far as such property is not disposed of by deed, will, contract or other effectual disposition, the same shall be administered, dealt with and distributed as if it were personal property not so disposed of.

Devolution to personal representative of deceased.
Imp. Act 60 and 61 V. c. 65, s. 1.

(2) This section shall apply to property over which a person executes by will a general power of appointment as if it were property vested in him.

Idem where under appointment.

(3) This section shall not apply to estates tail or to the personal property, except chattels real, of any person who, at the time of his death, is domiciled out of Ontario. 10 Edw. VII. c. 56, s. 3.

Exceptions.

Administration of Real Property.

4. The enactments and rules of law relating to the effect of probate or letters of administration as respects personal property, shall apply to the effect of enactments as to probate, etc., etc.

Application of enactments as to probate, etc., etc.

Imp. Act
60 and 61 V.
c. 65 (2).

Exception.

property and as respects the dealings with personal property before probate or administration and as respects the payment of costs of administration and other matters in relation to the administration of personal estate and the powers, rights, duties and liabilities of personal representatives in respect of personal estate shall apply to real property vesting in them, so far as the same are applicable as if that real property were personal property, save that it shall not be lawful for some or one only of several joint personal representatives without the authority of the Supreme Court or a Judge thereof to sell or transfer real property. 10 Edw. VII. c. 56, s. 4.

Real and
personal
property
assimilated
in matters of
adminis-
tration.

Imp. Act
60 and 61 V.
c. 65, s. 2 (3).

5. Subject to the other provisions of this Act, in the administration of the assets of a deceased person, his real property shall be administered in the same manner, subject to the same liability for debts, costs and expenses and with the same incidents as if it were personal property, but nothing in this section shall alter or affect as respects real or personal property of which the deceased has made a testamentary disposition the order in which real and personal assets are now applicable to the payment of funeral and testamentary expenses, the costs and expenses of administration, debts or legacies, or the liability of real property to be charged with the payment of legacies. 10 Edw. VII. c. 56, s. 5.

Payment of Debts out of Residue.

Payment of
debts out of
residuary
estate.

Rev. Stat.
c. 120.

6. Subject to provisions of section 38 of *The Wills Act* the real and personal property of a deceased person comprised in any residuary devise or bequest shall, except so far as a contrary intention appears from his will or any codicil thereto, be applicable rateably, according to their respective values, to the payment of his debts, funeral and testamentary expenses and the cost and expenses of administration. 10 Edw. VII. c. 56, s. 6.

How far
personal
representa-
tives to be
deemed
"heirs."

7. When any part of the real property of a deceased person vests in his personal representative under this Act such personal representative, in the interpretation of any Act of this Legislature, or in the construction of any instrument to which the deceased was a party, or under which he is interested, shall, while the estate remains in him, be deemed in law his heir, as respects such part, unless a contrary intention appears; but nothing in this section shall affect the beneficial right to any property, or the construction of words of limitation of any estate in or by any deed, will or other instrument. 10 Edw. VII. c. 56, s. 7.

Mortgages, Trust Estates and Dower.

Trust estates
and interests
of mortgagees.

8. Where an estate or interest of inheritance in real property is vested on any trust or by way of mortgage in

any person solely the same shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or administrator in like manner as if the same were personal estate vesting in him and, accordingly, all the like powers for one only of several joint executors or administrators as well as for a single executor or administrator and for all the executors and administrators together to dispose of and otherwise deal with the same shall belong to the deceased's executor or administrator with all the like incidents but subject to all the like rights, equities and obligations as if the same were personal estate vesting in him, and for the purposes of this section the executor or administrator of the deceased shall be deemed in law his heirs and assigns within the meaning of all trusts and powers. 10 Edw. VII. c. 56, s. 8.

9.—(1) Nothing in this Act shall take away a widow's right to dower; but a widow may by deed or instrument in writing, attested by at least one witness, elect to take her interest under this Act in her husband's undisposed of real property in lieu of all claim to dower in respect of the real property of which her husband was at any time seised, or to which at the time of his death he was beneficially entitled; and unless she so elects she shall not be entitled to share in the undisposed of real property.

(2) The personal representative of the deceased may, by notice in writing, require his widow to make her election, and if she fails to execute and deliver a deed or instrument of election to him within six months after the service of the notice she shall be deemed to have elected to take her dower.

(3) Where the widow is an infant or a lunatic the right of election may be exercised on her behalf by the Official Guardian, with the approval of a Judge of the Supreme Court or by some person authorized by a Judge of the Supreme Court to exercise it; and the Official Guardian or the person so authorized may, for and in the name of the widow, give all notices and do all acts necessary or incidental to the exercise of such right. 10 Edw. VII. c. 56, s. 9.

10.—(1) Where there is no legal personal representative of a deceased mortgagor of freehold property it shall be sufficient, for the purposes of an action, for the foreclosure of the equity of redemption in, or for the sale of such property that the person beneficially entitled under the last will and testament, if any, of the deceased mortgagor, or under the provisions of this Act, to such property or the proceeds thereof be made defendant to such action, and it shall not be necessary that a legal personal representative of the deceased mortgagor be appointed or be made a defendant thereto unless it shall be otherwise ordered by the Court in which the action is brought or by a Judge

Imp. Act
44 and 45 V.
c. 41, s. 30.

Saving as to
dower and
right of
election.

Where widow
under
disability.

Who to be
defendants in
action for
foreclosure
where no per-
sonal repre-
sentative of
mortgagor.

thereof; but if, during the pendency of such action, the equity of redemption devolves upon and becomes vested in a legal personal representative of the mortgagor he shall be made a party to the action.

"Mortgagor"
meaning of

(2) In subsection 1 the word "mortgagor" shall include the assignee of a mortgagor and any person entitled to or interested in the equity of redemption. 10 Edw. VII. c. 56, s. 10.

Application
for order
allowing sale
free of dower
or curtesy.

11.—(1) Where the personal representative desires to sell any real property devolving upon him free from curtesy or dower he may apply to a Judge of the Supreme Court, who may, in a summary way, and upon notice, to be served personally unless the Judge otherwise directs, order that the same shall be sold free from the right of the tenant by the curtesy or dowress; and in making such order regard shall be had to the interests of all parties.

Effect.

(2) If a sale free from such curtesy or dower is ordered all the right and interest of such tenant by the curtesy or dowress shall pass thereby; and no conveyance or release thereof to the purchaser shall be required; and the purchaser, his heirs and assigns, shall hold the real property freed and discharged from the estate or interest of such tenant by the curtesy or dowress.

Payment in
satisfaction of
dower or
curtesy.

(3) The Judge may direct the payment of such sum in gross out of the purchase money to the person entitled to curtesy or dower as he may deem, upon the principles applicable to life annuities, a reasonable satisfaction for such estate or interest; or may direct the payment to the person entitled of an annual sum, or of the income or interest to be derived from the purchase money or any part thereof, as he may deem just, and for that purpose may make such order for the investment or other disposition of the purchase money or any part thereof as he may deem necessary. 10 Edw. VII. c. 56, s. 11.

Widow's
preferential
share where
estate does
not exceed
\$1,000.

12.—(1) The real and personal property of every man dying intestate and leaving a widow but no issue shall, where the net value of such real and personal property does not exceed \$1,000, belong to his widow absolutely and exclusively.

Where estate
exceeds
\$1,000.

(2) Where the net value exceeds \$1,000 the widow shall be entitled to \$1,000 part thereof, absolutely and exclusively, and shall have charge thereon for such sum with interest thereon from the date of the death of the intestate at 4 per centum per annum until payment.

Widow's share
in remainder
of estate.

(3) The provision for the widow made by this section shall be in addition and without prejudice to her interest and share in the residue of the real and personal property of the intestate remaining after payment of such sum of \$1,000

and interest in the same way as if such residue had been the whole of the intestate's real and personal property, and this section had not been enacted.

(4) Where the estate consists in whole or in part of real property this section shall apply only if the widow elects under section 9 to take an interest in her husband's undisposed of real property in lieu of dower. Where estate consists of real property.

(5) In this section "net value" shall mean the value of the real and personal property after payment of the charges thereon and the debts, funeral expenses and expenses of administration, including succession duty. 10 Edw. VII. c. 56, s. 12. "Net value" meaning of.

VESTING OF ESTATE AND CAUTIONS.

13.—(1) Real property not disposed of, conveyed to, divided or distributed among the persons beneficially entitled thereto, under the provisions of section 21, by the personal representative within three years after the death of the deceased shall, subject to *The Land Titles Act* in the case of land registered under that Act, at the expiration of that period, whether probate or letters of administration have or have not been taken, be thenceforward vested in the persons beneficially entitled thereto under the will or upon the intestacy or their assigns without any conveyance by the personal representative unless such personal representative, if any, has registered, in the proper registry or land titles office, a caution, Form 1, under his hand, and if such caution is so registered such real property or the part thereof mentioned therein shall not be so vested for twelve months from the time of registration of such caution or of the last caution if more than one are registered. Vesting of real estate not disposed of within three years. Rev. Stat. c. 126. Unless caution registered.

(2) The execution of every caution shall be verified by the affidavit of a subscribing witness in the manner prescribed by *The Registry Act*, or *The Land Titles Act*, as the case may be. Verification. Rev. Stat. cc. 124, 126.

(3) Where the caution specifies certain parcels of land it shall be effectual as to those parcels only. Effect.

(4) The personal representative, before the expiration of the twelve months, may register a certificate, Form 2, withdrawing the caution; or withdrawing the same as to any parcel of land specified in such certificate and, upon registration of the certificate, the property or the parcel specified shall be treated as if the caution had expired. Withdrawal of caution.

(5) The certificate of withdrawal shall be verified by an affidavit of a subscribing witness, Form 3. Verification.

(6) Before a caution expires it may be re-registered, and so on from time to time as long as the personal representative deems it necessary, and every caution shall continue Renewal of caution.

in force for twelve months from the time of its registration or re-registration. 10 Edw. VII. c. 56, s. 13.

Ordinary
rights of
executors, etc.,
preserved.

Rev. Stat.
c. 121.

14. Nothing in section 13 shall derogate from any right possessed by an executor or administrator with the will annexed under a will or under *The Trustee Act* or from any right possessed by a trustee under a will. 10 Edw. VII. c. 56, s. 14.

Registration
of caution
after three
years from
death of
testator.

15.—(1) Where a personal representative has not registered a caution within the proper time after the death of the deceased, or has not re-registered a caution within the proper time, he may register or re-register the caution, as the case may be, provided he registers therewith

(a) The affidavit of execution;

(b) A further affidavit stating that he finds or believes that it is or may be necessary for him to sell the real property of the deceased or the part thereof mentioned in the caution, under his powers and in fulfilment of his duties; and as far as they are known to him, the names of all persons beneficially interested in the real property, and whether any, and if so which of them, are infants or lunatics;

(c) The consent in writing of every adult and of the Official Guardian on behalf of every infant and lunatic whose property or interest would be affected; and an affidavit verifying such consent; or

(d) In the absence and in lieu of such consent an order of a Judge of the Supreme Court or of the County or District Court of the county or district wherein the property or some part thereof is situate, or the certificate of the Official Guardian authorizing the caution to be registered, or re-registered, which order or certificate the Judge or Official Guardian may make with or without notice on such evidence as satisfies him of the propriety of permitting the caution to be registered or re-registered; and the order or certificate to be registered shall not require verification and shall not be rendered null by any defect of form or otherwise.

Application of
this section.

(2) This section shall extend to cases where a grant of probate of the will or of administration to the estate of the deceased may not have been made within the period after the death of the testator or intestate within which a caution is required to be registered.

Effect of such
registration.

(3) Where a caution is registered or re-registered, under the authority of this section, it shall have the same effect

as a caution registered within the proper time after the death of the deceased and of vesting or re-vesting, as the case may be, the real property of the deceased in his personal representative, save as to persons who in the meantime have acquired rights for valuable consideration from or through any person beneficially entitled; and save also and subject to any equities of any non-consenting person beneficially entitled, or person claiming under him, for improvements made after the time within which the personal representative might, without any consent, order or certificate, have registered or re-registered a caution, if his real property is afterwards sold by the personal representative.

(4) Where there are two or more personal representatives it shall be sufficient if any caution or the affidavit mentioned in clause (b) of subsection 1 is signed or made by one of such personal representatives. 10 Edw. VII. c. 56, s. 15. ^{Signature to caution.}

16. Where a caution has been registered or re-registered under the authority of any enactment repealed and not re-enacted by this Act and is still in force, such caution shall have the same effect as if such enactment had not been repealed and may be registered in the manner provided by section 13. 10 Edw. VII. c. 56, s. 16. ^{Effect of repealing enactment.}

17. Any person beneficially entitled to any real property affected by the registration or re-registration of a caution may apply to a Judge of the Supreme Court to vacate such registration or re-registration, and the Judge, if satisfied that the vesting of any such real property in such person or of any property of the deceased in any other of the persons beneficially entitled ought not to be delayed, may order that such registration or re-registration be vacated as to such property; and every caution, the registration or re-registration of which is so vacated, shall thereafter cease to operate. 10 Edw. VII. c. 56, s. 17. ^{Vacating caution.}

18. Where real property becomes vested under this Act in two or more persons beneficially entitled under this Act, they shall take as tenants in common in proportion to their respective rights, unless in the case of a devise they take otherwise under the provisions of the will of the deceased. 10 Edw. VII. c. 56, s. 18. ^{Land vesting in two or more persons.}

POWERS OF PERSONAL REPRESENTATIVE.

19.—(1) Where an infant is interested in real property which but for this Act would not devolve on the personal representative, no sale or conveyance shall be valid under this Act without the written approval of the Official Guardian appointed under *The Judicature Act*, or, in the absence of such consent or approval, without an order of a Judge of the Supreme Court. ^{Sales where infants interested. Rev. Stat. c. 56.}

Local Guardians in outer counties.

(2) The Supreme Court may appoint the Local Judge of any county or district or the Local Master therein, as Local Guardian of Infants, in such county or district during the pleasure of the Court, with authority to give such written approval instead of the Official Guardian; and the Official Guardian and Local Guardian shall be subject to such rules as the Supreme Court may make in regard to their authority and duties under this Act. 10 Edw. VII. c. 56, s. 19.

Power of personal representative over real property.

20. Except as herein otherwise provided the personal representative of a deceased person shall have power to dispose of and otherwise deal with the real property vested in him by virtue of this Act, with the like incidents, but subject to the like rights, equities, and obligations, as if the same were personal property vested in him. 10 Edw. VII. c. 56, s. 20.

Powers of executors and administrators as to selling and conveying real estate.

21.—(1) The powers of sale conferred by this Act on a personal representative may be exercised for the purpose not only of paying debts, but also of distributing or dividing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and in no case shall it be necessary that the persons beneficially entitled shall concur in any such sale except where it is made for the purpose of distribution only.

Concurrence of heirs and devisees.

(2) No sale of any such real property made for the purpose of distribution only shall be valid as respects any person beneficially entitled thereto unless he concurs therein; but where a lunatic is beneficially entitled or where there are other persons beneficially entitled whose consent to the sale is not obtained by reason of their place of residence being unknown or where in the opinion of the Official Guardian it would be inconvenient to require the concurrence of such persons, he may, upon proof satisfactory to him that such sale is in the interest and to the advantage of the estate of such deceased person and the persons beneficially interested therein, approve such sale on behalf of such lunatic and non-concurring persons, and any such sale made with the written approval of the Official Guardian shall be valid and binding upon such lunatic and non-concurring persons; and for this purpose the Official Guardian shall have the same powers and duties as he has in the case of infants; and provided also that in any case the Supreme Court or a Judge thereof may dispense with the concurrence of the persons beneficially entitled or any or either of them.

Proviso as to lunatics and non-concurring heirs and devisees.

Powers of executors and administrators as to dividing estate among persons entitled.

(3) The personal representative shall also have power, with the concurrence of the adult persons beneficially entitled thereto, and with the written approval of the Official Guardian on behalf of infants or lunatics, if any, so entitled, to convey, divide or distribute the estate of the

deceased person or any part thereof among the persons beneficially entitled thereto according to their respective shares and interests therein.

(4) Upon the application of the personal representative or of any person beneficially entitled the Supreme Court or a Judge thereof may before the expiration of three years from the death of the deceased, direct the personal representative to divide or distribute the estate or any part thereof to or among the persons beneficially entitled according to their respective rights and interests therein.

Distribution by order of Court within three years from death.

(5) The power of division conferred by subsection 3 may also be exercised, although all the persons beneficially interested do not concur, with the written approval of the Official Guardian, which may be given under the same conditions and with the like effect as in the case of a sale under subsection 2.

Exercise of power of division without concurrence.

(6) Where the Inspector of Prisons and Public Charities is the Statutory Committee under the provisions of *The Hospitals for the Insane Act* of a lunatic beneficially entitled, it shall be the duty of the Official Guardian to notify the Inspector of any sale to which he has consented and he may, by leave of the Supreme Court or a Judge thereof, pay to the Inspector the share of such lunatic or such part thereof as the Court or Judge may direct. 10 Edw. VII. c. 56, s. 21 (1-6).

Where lunatic beneficially entitled.
Rev. Stat. c. 295.

(7) Section 20 and this section shall not apply to an administrator where the letters of administration are limited to the personal property, exclusive of the real property, and shall not derogate from any right possessed by a personal representative independently of this Act, but an executor shall not exercise the powers conferred by this section until he has obtained probate of the will unless with the approval of the Supreme Court or a Judge thereof. 10 Edw. VII. c. 56, s. 21 (7); 2 Geo. V. c. 17, s. 26 (1).

Sections 20 and 21 not to apply to administrators of personal estate only.

Provision as to executor who has not obtained probate.

22. The acceptance by an adult of his share of the purchase money in the case of a sale by a personal representative which has been made without the written approval of the Official Guardian, where such approval is required, shall be a confirmation of the sale as to him. 10 Edw. VII. c. 56, s. 22.

Effect of accepting share of purchase money.

23. A person purchasing in good faith and for value real property from the personal representative in manner authorized by this Act shall be entitled to hold the same freed and discharged from any debts or liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will, and from all claims of the persons beneficially entitled thereto, and shall not be bound to see to the application of the purchase money. 10 Edw. VII. c. 56, s. 23.

Protection of bona fide purchasers from personal representatives.

Protection of
bona fide pur-
chasers from
beneficiary.

24.—(1) A person purchasing real property in good faith and for value from a person beneficially entitled, to whom it has been conveyed by the personal representative, by leave of the Supreme Court or a Judge thereof, shall be entitled to hold the same freed and discharged from any debts and liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will; but nothing in this section shall affect the rights of creditors as against the personal representative personally, or as against any person beneficially entitled to whom real property of a deceased owner has been conveyed by the personal representative.

Extent to
which real
property
remains liable
to debts and
personal
liability of
beneficiary.

(2) Real property which becomes vested in the person beneficially entitled thereto, under section 13, shall continue to be liable to answer the debts of the deceased owner so long as it remains vested in such person, or in any person claiming under him, not being a purchaser in good faith and for valuable consideration, as it would have been if it had remained vested in the personal representative, and in the event of a sale thereof in good faith and for value by such person beneficially entitled he shall be personally liable for such debts to the extent of the proceeds of such real property. 10 Edw. VII. c. 56, s. 24.

Powers of
personal
representative
as to leasing
and mort-
gaging.

25.—(1) The powers of a personal representative under this Act shall include

- (a) Power to lease from year to year while the real property remains vested in him.
- (b) Power with the approval of the Supreme Court or a Judge thereof to lease for a longer term.
- (c) Power to mortgage for the payment of debts.

Approval of
official
guardian.

(2) The written approval of the Official Guardian to mortgaging shall be required where it would be required if the real property were being sold. 10 Edw. VII. c. 56, s. 25.

Rights of
purchaser in
good faith
against claims
of creditors.

26.—(1) A purchaser in good faith and for value of real property of a deceased owner which has become vested under the provisions of section 13 in a person beneficially entitled thereto, shall be entitled to hold it freed and discharged from the claims of creditors of the deceased owner except such of them of which he had notice at the time of his purchase.

Liability of
personal
representa-
tive.

(2) Nothing in subsection 1 shall affect the right of the creditor against the personal representative personally where he has permitted the real property to become vested in the person beneficially entitled to the prejudice of the creditor or against the person beneficially entitled. 10 Edw. VII. c. 56, s. 26.

DISTRIBUTION OF ESTATE.

27.—(1) An illegitimate child or relative shall not share Effect of illegitimacy. under any of the provisions of this Act.

(2) A person born out of matrimony shall not become idem. legitimate by the subsequent marriage of his parents. 10 Edw. VII. c. 56, s. 27.

Advancement.

28.—(1) If any child of an intestate has been advanced Cases of children who have been advanced by settlement, etc. by him by settlement or portion of real or personal property, or both, and the same has been so expressed by the intestate in writing, or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal property of such intestate to be distributed under the provisions of this Act; and if such advancement is equal to or greater than the amount of the share which such child would be entitled to receive of the real and personal property of the deceased, as so reckoned, then such child and his descendants shall be excluded from any share in the real and personal property of the intestate.

(2) If such advancement is less than such share such child and his descendants shall be entitled to so much only If such advancement be not equal. of the real and personal property as is sufficient to make all the shares of the children in such real and personal property and advancement to be equal, as nearly as can be estimated.

(3) The value of any real or personal property so Value of property advanced, how estimated. advanced shall be deemed to be that, if any, which has been acknowledged by the child by an instrument in writing; otherwise such value shall be estimated according to the value of the property when given.

(4) The maintaining or educating, or the giving of money Education, etc., not advancement. to a child without a view to a portion or settlement in life shall not be deemed an advancement within the meaning of this Act. 10 Edw. VII. c. 56, s. 28.

Intestate Married Women.

29.—(1) The real and personal property, whether separate Distribution of property of married woman dying intestate. or otherwise, of a married woman in respect of which she dies intestate, shall be distributed as follows: One-third to her husband if she leaves issue, and one-half if she leaves no issue, and subject thereto shall devolve as if her husband had pre-deceased her. 10 Edw. VII. c. 56, s. 29 (1); 2 Geo. V. c. 17, s. 26 (2).

(2) A husband who, if this Act had not been passed, Saving as to husband's interest in property of wife. would be entitled to an interest as tenant by the curtesy in real property of his wife, may, by deed or instrument in

writing executed, and attested by at least one witness, and delivered to the personal representative, if any, or if there is none, deposited in the office of the Surrogate Clerk at Toronto, within six months after his wife's death, elect to take such interest in the real and personal property of his wife as he would have taken if this Act had not been passed, in which case the husband's interest therein shall be ascertained in all respects as if this Act had not been passed, and he shall be entitled to no further interest thereunder. 10 Edw. VII. c. 56, s. 29 (2).

Distribution of Personality.

Distribution
of personal
estate.

30. Except as in this Act is otherwise provided the personal property of a person dying intestate shall be distributed as follows, that is to say: one-third to the wife of the intestate and all the residue by equal portions among the children of the intestate and such persons as legally represent such children in case any of them have died in his lifetime, and if there are no children or any legal representatives of them then one-half of the personal property shall be allotted to the wife, and the residue thereof shall be distributed equally to every of the next of kindred of the intestate who are of equal degree and those who legally represent them, and for the purpose of this section the father and the mother and the brothers and sisters of the intestate shall be deemed of equal degree; but there shall be no representations admitted among collaterals after brothers' and sisters' children, and if there is no wife then all such personal property shall be distributed equally among the children, and if there is no child then to the next of kindred in equal degree of or unto the intestate and their legal representatives and in no other manner. 10 Edw. VII. c. 56, s. 30.

Children share
with mother.

31. If, after the death of a father, any of his children die intestate without wife or children in the lifetime of the mother, every brother and sister and the representatives of them shall have an equal share with her, anything in section 30 to the contrary notwithstanding. 10 Edw. VII. c. 56, s. 31.

Distribution
not to be made
for one year.
Rev. Stat.
c. 121.

32. Subject to provisions of section 55 of *The Trustee Act*, no such distribution shall be made until after one year from the death of the intestate, and every person to whom in distribution a share shall be allotted shall, if any debt owing by the intestate shall be afterwards sued for and recovered or otherwise duly made to appear, refund and pay back to the personal representative his rateable part of that debt and of the costs of suit and charges of the personal representative by reason of such debt out of the part or share so allotted to him, thereby to enable the personal representative to pay and satisfy such debt, and shall give bond with sufficient sureties that he will do so. 10 Edw. VII. c. 56, s. 32.

GENERAL PROVISIONS.

33.—(1) The Official Guardian may, with the approval ^{Rules of procedure.} of the Lieutenant-Governor in Council, or of the Judges of the Supreme Court, make Rules regulating the practice and procedure to be followed in all proceedings under this Act, in which his privity, consent or approval is required, and may frame a tariff of the fees to be allowed and paid to solicitors for services rendered in such proceedings.

(2) Such Rules and tariff when so approved shall be published ^{Publication.} in the *Ontario Gazette*, and shall thereupon have the force of law; and the same shall be laid before the Assembly at the next session after the publication thereof.

(3) The Lieutenant-Governor in Council may appoint a ^{Appointment of Deputy Official Guardian pro tem.} Deputy *pro tempore* of the Official Guardian for the purposes of this Act who shall have all the powers of the Official Guardian for such purposes. 10 Edw. VII. c. 56, s. 33.

34. Affidavits may be used in proceedings taken under ^{Affidavits.} this Act. 10 Edw. VII. c. 56, s. 34.

FORM 1.

(Section 13.)

THE DEVOLUTION OF ESTATES ACT.

I, _____, executor of (or administrator, with the will annexed of, or administrator of) _____, who died on or about the _____ day _____ 19____, certify that it may be necessary for me under my powers and in fulfilment of my duty as executor (or administrator) to sell the real property of the said _____ or part thereof (or the caution may specify any particular part or parcel) and of this all persons concerned are hereby required to take notice.

10 Edw. VII. c. 56, Form 1.

FORM 2.

(Section 13.)

THE DEVOLUTION OF ESTATES ACT.

I, _____, executor (or administrator) of _____, hereby withdraw the caution heretofore registered with respect to the real property of _____ (or as the case may be).

10 Edw. VII. c. 56, Form 2.

FORM 3.

(Section 13.)

THE DEVOLUTION OF ESTATES ACT.

I, _____, of, etc., make oath and say I am well acquainted with _____ named in the above certificate; that I was present and did see the said certificate signed by the said _____; that I am a subscribing witness to the said certificate and I believe the said _____ is the person who registered the caution referred to in the said certificate.

Sworn, etc.

10 Edw. VII. c. 56, Form 3.

3. *WILLS, EXECUTORS AND TRUSTEES.*

CHAPTER 120.

An Act respecting Wills.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Wills Act*. 10 Edw VII. Short title.
c. 57, s. 1.

2. In this Act,

Interpretation.

- (a) "Land" shall include messuages, and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties, or any of them, and any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency;
- (b) "Mortgage" shall include any lien for unpaid purchase money, and any charge, incumbrance, or obligation of any nature whatever upon any land or tenements of a testator or intestate, and "mortgagee" shall have a meaning corresponding with that of mortgage; "Mortgage." Imp. Act, 30-31 V. c. 69, s. 2.
- (c) "Personal estate" shall include leasehold estates and other chattels real, and also money, shares of government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property, except real estate, which by law devolves upon the executor or administrator, and any share or interest therein; "Personal estate"
- (d) "Real estate" shall include messuages, land, rents and hereditaments, whether freehold or of any "Real estate."

other tenure, and whether corporeal, incorporeal or personal, and any undivided share thereof, and any estate, right, or interest (other than a chattel interest) therein;

"Will."
Imp. Act, 1 V.
c. 26, s. 1.

(e) "Will" shall include a testament, and a codicil, and an appointment by will, or by writing in the nature of a will in exercise of a power, and also a disposition by will and testament, or devise of the custody and tuition of any child, by virtue of *The Infants' Act*, and any other testamentary disposition. 10 Edw. VII. c. 57, s. 2.

Rev. Stat.
c. 153.

WILLS BEFORE 1ST JANUARY, 1874.

When real estate subsequently acquired may pass by the will.

3. Where a will made before, and not re-executed, republished or revived after the first day of January, 1874, by any person dying after the sixth day of March, 1834, contains a devise in any form of words of all such real estate as the testator dies seised or possessed of, or of any part or porportion thereof, such will shall be valid and effectual to pass any land acquired by the devisor, after the making of such will, in the same manner as if the title thereto had been acquired before the making thereof. 10 Edw. VII. c. 57, s. 3.

What estate deemed to pass by devise.

4. Where land is devised in any such will it shall be considered that the devisor intended to devise all such estate as he was seised of in the same land, whether in fee simple or otherwise, unless it appears upon the face of such will that he intended to devise only an estate for life, or other estate less than he was seised of at the time of making the will containing such devise. 10 Edw. VII. c. 57, s. 4.

Witness need not subscribe in the presence of the testator.

5. Any will affecting land executed after the sixth day of March, 1834, and before the first day of January, 1874, in the presence of and attested by two or more witnesses shall have the same validity and effect as if executed in the presence of and attested by three witnesses; and it shall be sufficient if the witnesses subscribed their names in presence of each other, although their names were not subscribed in presence of the testator. 10 Edw. VII. c. 57, s. 5.

Will by married woman between 4th May, 1859, and 1st January, 1874.

6. After the fourth day of May, 1859, and before the first day of January, 1874, every married woman might, by devise or bequest executed in the presence of two or more witnesses, neither of whom was her husband, make any devise or bequest of her separate property, real or personal, or of any rights therein, whether such property was acquired before or after marriage. to or among her child or children issue of any marriage, and failing there being any issue, then to her husband, or as she might see fit, in the same

manner as if she were sole and unmarried. 10 Edw. VII. c. 57, s. 6.

WILLS AFTER 1ST JANUARY, 1874.

7. Unless herein otherwise expressly provided, the subsequent sections of this Act shall not extend to any will made before the first day of January, 1874; but every will re-executed or re-published, or revived by any codicil, shall for the purposes of those sections, be deemed to have been made at the time at which the same was so re-executed, re-published or revived. 10 Edw. VII. c. 57, s. 7.

Operation of
succeeding
sections.

Imp. Act, 1 V.
c. 26, s. 34.

8. Sections 22, 23, 26, and 27 shall not apply to the will of any person who died before the first day of January, 1869, but shall apply to the will of every person who died since the thirty-first day of December, 1868, or who dies after the passing of this Act. 10. Edw. VII. c. 57, s. 8.

Application of
sections 22,
23, 26 and 27.

9. Subject to the provisions of *The Devolution of Estates Act* and of *The Accumulations Act*, every person may devise, bequeath, or dispose of by will, executed in manner herein-after mentioned, all real estate and personal estate to which he may be entitled, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon his heirs or upon his executor or administrator; and the power hereby given shall extend to estates *pur autre vie*, whether there is or is not any special occupant thereof, and whether the same are corporeal or incorporeal hereditaments; and also to all contingent, executory, or other future interests in any real estate or personal estate, whether the testator is or is not ascertained as the person, or one of the persons, in whom the same may become vested, and whether he is entitled thereto under the instrument by which the same were created, or under any disposition thereof by deed or will, and also to all rights of entry for conditions broken and other rights of entry, and also to such of the same estates, interests and rights respectively, and other real estate and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will. 10 Edw. VII. c. 57, s. 9.

Rev. Stat.
cc. 119, 110.

Power to dis-
pose of all
property.
Imp. Act, 1 V.
c. 26, s. 3.

Estates
pur autre vie.

Contingent
interests.

Rights of
entry.

Property
acquired after
the will.

10. A widow may, in like manner, bequeath the crop of her ground as well of her dower as of other her real estate. 10 Edw. VII. c. 57, s. 10.

Widow's
right to dis-
pose of crop.
20 Hy. 3, (St.
of Merton)
c. 2.

11. No will made by any person under the age of twenty-one years shall be valid. 10 Edw. VII. c. 57, s. 11.

Wills by infants
invalid.
Imp. Act, 1 V.
c. 26, s. 7.

12.—(1) No will shall be valid unless it is in writing and executed in manner hereinafter mentioned; that is to say, it shall be signed at the foot or end thereof by the

Execution.
Imp. Act, 1 V.
c. 26, s. 9.

Attestation.

testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary.

Position of
signature.
Imp. Act
15-16 V.
c. 24, s. 1.

(2) Every will, so far only as regards the position of the signature of the testator, or of the person so signing for him, shall be valid, within the meaning of this Act, if the signature is so placed, at, or after, or following or under, or beside, or opposite to the end of the will, that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature does not follow or is not immediately after the foot or end of the will, or by the circumstance that a blank space intervenes between the concluding word of the will and the signature, or by the circumstance that the signature is placed among the words of the *testimonium* clause, or of the clause of attestation, or follows or is after or under the clause of attestation either with or without a blank space intervening, or follows, or is after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature is on a side, or page, or other portion of the paper or papers containing the will, whereon no clause or paragraph or disposing part of the will is written above the signature, or by the circumstance that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature shall be operative to give effect to any disposition, or direction which is underneath, or which follows it, nor shall it give effect to any disposition or direction inserted after the signature was made. 10 Edw. VII. c. 57, s. 12.

Exercise of
appointments
by will.
Imp. Act 1 V.
c. 26, s. 10.

13. No appointment made by will, in exercise of any power, shall be valid unless the same is executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. 10 Edw. VII. c. 57, s. 13.

Wills of
personalty of
soldiers and
sailors.
Imp. Act, 1 V.
c. 26, s. 11.

14. Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the passing of this Act. 10 Edw. VII. c. 57, s. 14.

15. Every will executed in manner hereinbefore required shall be valid without any other publication thereof. Publication unnecessary. Imp. Act. 1 V. c. 26, s. 13.
10 Edw. VII. c. 57, s. 15.

16. If any person who attests the execution of a will is, at the time of the execution thereof, or becomes at any time afterwards, incompetent to be admitted as a witness to prove the execution thereof, such will shall not on that account be invalid. Effect of incompetency of witness. Imp. Act. 1 V. c. 26, s. 14.
10 Edw. VII. c. 57, s. 16.

17. If any person attests the execution of any will to whom, or to whose wife or husband, any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting any real estate or personal estate, other than and except charges and directions for the payment of any debt, is thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or such wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will. Gifts, etc., to witness invalid. Imp. Act. 1 V. c. 26, s. 15.
10 Edw. VII. c. 57, s. 17.

18. In case, by any will, any real estate or personal estate is charged with any debt, and any creditor, or the wife or husband of any creditor, whose debt is so charged attests the execution of such will, such creditor, notwithstanding such charge, shall be admitted as a witness to prove the execution of such will, or the validity or invalidity thereof. Creditor as witness. Imp. Act. 1 V. c. 26, s. 16.
10 Edw. VII. c. 57, s. 18.

19. No person shall, on account of his being an executor of a will, be incompetent to be admitted as a witness to prove the execution of such will, or the validity or invalidity thereof. Executor as witness. Imp. Act. 1 V. c. 26, s. 17.
10 Edw. VII. c. 57, s. 19.

20.—(1) Every will made out of Ontario by a British subject, whatever may be his domicile at the time of making the same or at the time of his death, shall, as regards personal estate, be held to be well executed for the purpose of being admitted to probate in Ontario, if the same was made according to the forms required either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the law then in force in that part of His Majesty's Dominions where he had his domicile of origin. Execution out of Ontario by a British subject. Imp. Act. 24 and 25 V. 114.

(2) Every will made within Ontario by a British subject, whatever may be his domicile at the time of making the same, shall be held to be well executed for the purpose of being admitted to probate in Ontario, if the same was made according to the forms required either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the law then in force in that part of His Majesty's Dominions where he had his domicile of origin. Execution by British subject in Ontario. Imp. Act. 24 and 25 V. 114.

same or at the time of his death, shall, as regards personal estate, be held to be well executed and shall be admitted to probate in Ontario if the same was made and executed according to the forms required by the law of Ontario.

Change of
domicile.

(3) No will shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.

Saving.

(4) Nothing in this section shall invalidate any will, as regards personal estate, which would have been valid if this section had not been passed, except as such will may be revoked or altered by any subsequent will made valid by this section.

Application to
wills of per-
sons dying
after 17th
March, 1902.

(5) This section, except subsection 2, shall extend only to wills made by persons dying after the 17th day of March, 1902, and subsection 2 shall extend only to wills made by persons dying after the 19th day of March, 1910. 10 Edw. VII. c. 57, s. 20.

Revocation by
marriage.
Imp. Act. 1 V.
c. 26, s. 18.

21.—(1) Every will made by any person dying on or after the 13th day of April, 1897, shall be revoked by the marriage of the testator, except

Exceptions.

(a) Where it is declared in the will that the same is made in contemplation of such marriage;

(b) Where the wife or husband of the testator elects to take under the will, by an instrument in writing signed by the wife or husband and filed, within one year after the testator's death, in the office of the Surrogate Clerk at Toronto;

(c) Where the will is made in the exercise of a power of appointment and the real estate or personal estate thereby appointed would not in default of such appointment pass to the testator's heirs, executor or administrator, or the person entitled as the testator's next of kin under *The Devolution of Estates Act*.

Rev. Stat.
c. 119.

(2) The will of any testator who died between the 31st day of December, 1868, and the 13th day of April, 1897, shall be held to have been revoked by his subsequent marriage, unless such will was made under the circumstances set forth in clause (c). 10 Edw. VII. c. 57, s. 21.

Change in
circumstances.
Imp. Act. 1 V.
c. 26, s. 19.

22. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances. 10 Edw. VII. c. 57, s. 22.

Revocation,
how effected.
Imp. Act. 1 V.
c. 26, s. 20.

23. No will, or any part thereof, shall be revoked otherwise than as aforesaid provided by section 21, or by another will executed in manner hereinbefore required, or by some

writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction with the intention of revoking the same. 10 Edw. VII. c. 57, s. 23.

24. No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration are not apparent, unless such alteration is executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses are made in the margin or in some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or in some other part of the will. 10 Edw. VII. c. 57, s. 24.

Obliterations, interlineations, etc.
Imp. Act, 1 V. c. 26, s. 21.

25. No will, or any part thereof, which has been in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and where any will which has been partly revoked, and afterwards wholly revoked, is revived such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof, unless an intention to the contrary is shown. 10 Edw. VII. c. 57, s. 25.

Revival.
Imp. Act, 1 V. c. 26, s. 22.

26. No conveyance or other act made or done subsequently to the execution of a will, of or relating to any real estate or personal estate therein comprised, except an act by which such will is revoked as aforesaid, shall prevent the operation of the will with respect to such estate, or interest in such real estate or personal estate, as the testator had power to dispose of by will at the time of his death. 10 Edw. VII. c. 57, s. 26.

Operation of the will as to any interest left in testator.
Imp. Act, 1 V. c. 26, s. 23.

27.—(1) Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will.

Will to speak from death.
Imp. Act, 1 V. c. 26, s. 24.

(2) This section shall apply to the will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or re-published after the death of her husband. 10 Edw. VII. c. 57, s. 27.

Imp. Act, 56-57 V. c. 63, s. 3.

Disposition of
lapsed devise.
Imp. Act, 1 V.
c. 26, s. 25.

28. Unless a contrary intention appears by the will such real estate as is comprised or intended to be comprised in any devise in such will contained which fails or becomes void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will. 10 Edw. VII. c. 57, s. 28.

Disposition of
leaseholds,
under a
general devise
of real estate.
Imp. Act, 1 V.
c. 26, s. 26.

29. A devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them, to which such description will extend as well as freehold estates, unless a contrary intention appears by the will. 10 Edw. VII. c. 57, s. 29.

Disposition of
property over
which testator
has a general
power of
appointment
under general
devise or
bequest.
Imp. Act, 1 V.
c. 26, s. 27.

30. A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate or any real estate to which such description will extend, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal estate described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description will extend, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will. 10 Edw. VII. c. 57, s. 30.

Estate passing
under devise
without
words of
limitation.
Imp. Act, 1 V.
c. 26, s. 28.
Rev. Stat.
c. 119.

31. Where any real estate is devised to any person without any words of limitation such devise shall, subject to *The Devolution of Estates Act*, be construed to pass the fee simple, or other the whole estate or interest, which the testator had power to dispose of by will, unless a contrary intention appears by the will. 10 Edw. VII. c. 57, s. 31.

Meaning of
"heir" in a
devise of real
estate.

32. Where any real estate is devised by any testator, dying on or after the 5th day of March, 1880, to the heir or heirs of such testator, or of any other person, and no contrary or other intention is signified by the will, the words "heir" or "heirs" shall be construed to mean the person or persons to whom the real estate of the testator, or of such other person as the case may be, would descend under the law of Ontario in case of an intestacy. 10 Edw. VII. c. 57, s. 32.

33. In any devise or bequest of real estate or personal estate, the words, "die without issue," or "die without leaving issue," or "have no issue," or any other words which import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention appears by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise; but this Act shall not extend to cases where such words import if no issue described in a preceding gift be born, or if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. 10 Edw. VII. c. 57, s. 33.

Import of words "die without issue," or to that effect.
Imp. Act, 1 V. c. 26, s. 29.

34. Where any real estate is devised to a trustee or executor such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years absolute or determinable, or an estate of freehold is thereby given to him expressly or by implication. 10 Edw. VII. c. 57, s. 34.

Estate passing under devise to trustee or executor.
Imp. Act, 1 V. c. 26, s. 30.

35. Where any real estate is devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, is not given to any person for life, or such beneficial interest is given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall, subject to *The Devolution of Estates Act*, be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust are satisfied. 10 Edw. VII. c. 57, s. 35.

When devise to a trustee shall pass the whole estate beyond what is requisite for the trust.
Imp. Act, 1 V. c. 26, s. 31.

36. Where any person to whom any real estate is devised for an estate tail, or an estate in *quasi* entail, dies in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue are living at the time of the death of the testator, such devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will. 10 Edw. VII. c. 57, s. 36.

When devises in tail not to lapse.
Imp. Act, 1 V. c. 26, s. 32.

37. Where any person, being a child or other issue of the testator to whom any real estate or personal estate is devised or bequeathed for any estate or interest not determin-

When gifts to issue are not to lapse.
Imp. Act, 1 V. c. 26, s. 33.

able at or before the death of such person, dies in the lifetime of the testator, leaving issue, and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will. 10 Edw. VII. c. 57, s. 37

Primary liability of real estate to satisfy specific charge.

Imp. Act, 17-18 V. c. 113, s. 1.

38.—(1) Where any person has died since the 31st day of December, 1865, or hereafter dies, seised of or entitled to any estate or interest in any real estate, which, at the time of his death, was or is charged with the payment of any sum of money by way of mortgage, and such person has not, by his will or deed or other document, signified any contrary or other intention, the heir or devisee to whom such real estate descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate, or any other real estate of such person, but the real estate so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

Consequence of general direction for payment of debts out of personality or residue. Imp. Act, 30-31 V. c. 69, s. 1, and 40-41 V. c. 31, s. 1.

(2) In the construction of a will to which this section relates, a general direction that the debts, or that all the debts, of the testator shall be paid out of his personal estate, or a charge or direction for the payment of debts upon or out of residuary real estate and personal estate or residuary real estate shall not be deemed to be a declaration of an intention contrary to or other than the rule in subsection 1 contained, unless such contrary or other intention is further declared by words expressly or by necessary implication referring to all or some of the testator's debts charged by way of mortgage on any part of his real estate.

Saving of mortgagee's rights.

(3) Nothing herein shall affect or diminish any right of the mortgagee to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying or otherwise; and nothing herein shall affect the rights of any person claiming under any will, deed or document made before the first day of January, 1874. 10 Edw. VII. c. 57, s. 38.

CHAPTER 121.

An Act respecting Trustees and Executors and the Administration of Estates.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Trustee Act*. 1 Geo. V. Short title. c. 26, s. 1.

2. In this Act,—

Interpretation.

(a) "Assign" shall mean and include the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring land of which such person is possessed, either for the whole estate of the person so possessed or for any less estate; and "assignment" shall have a corresponding meaning. "Assign."

(b) "Contingent right" as applied to land shall mean and include a contingent and executory interest, and a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility is or is not ascertained; also a right of entry whether immediate or future, vested or contingent. "Contingent right."

(c) "Convey" applied to any person, shall mean and include the execution and delivery by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seized, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance; and "conveyance" shall have a corresponding meaning. "Convey." "Conveyance."

(d) "Devisee" shall include the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description. "Devisee." Imp. Act. 56-57 Vict. c. 53, s. 50, part.

(e) "Instrument" shall include a deed, a will and a written document and an Act of this Legislature, but not a judgment or order of a court. "Instrument."

(f) "Land" shall include messuages, and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money "Land." Rev. Stat. c. 120, s. 2.

to be laid out in the purchase of land, and any share of the same hereditaments and properties, or any of them, and any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency.

"Lunatic." (g) "Lunatic" shall mean any person who has been declared a lunatic.

"Mortgage."
"Mortgagee." (h) "Mortgage" shall be applicable to every estate, interest, or property, in land or personal estate, which is merely a security for money; and "mortgagee" shall have a corresponding meaning and shall include every person deriving title under the original mortgagee.

Imp. Act,
13-14 Vict.
c. 60, s. 2 and
56-57 Vict.
c. 53, s. 50.

"Person of unsound mind." (i) "Person of unsound mind" shall mean any person, not an infant, who, not having been declared a lunatic, is incapable, from infirmity of mind, to manage his own affairs.

"Personal estate."
Rev. Stat
c. 120, s. 2.

(j) "Personal Estate" shall include leasehold estates and other chattels real, and also money, shares of Government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property, except real estate, which by law devolves upon the executor or administrator, and any share or interest therein.

"Personal representative."

(k) "Personal Representative" shall mean and include an executor, an administrator, and an administrator with the will annexed.

"Possessed."

(l) "Possessed" shall be applicable to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any land.

"Securities."

(m) "Securities" shall include stocks, funds and shares.

"Seized."

(n) "Seized" shall be applicable to any vested interest for life, or of a greater description, and shall extend to estates, legal and equitable, in possession, or in futurity, in any land.

"Stock."

(o) "Stock" shall include fully paid up shares, and any fund, annuity, or security transferable in books kept by any incorporated bank, company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein.

"Transfer."

(p) "Transfer," in relation to stock, shall include the performance and execution of every deed, power of attorney, act or thing, on the part of the transferor to effect and complete the title in the transferee.

(q) "Trust" shall not mean the duties incident to an "Trust." estate conveyed by way of mortgage; but, with this exception, shall include implied and constructive trusts and cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of personal representative of a deceased person; and "trustee" shall have a corresponding meaning and shall include a trustee however appointed and several joint trustees. "Trustee."

(r) "Will" shall include a testament, and a codicil, and "Will" an appointment by will, or by writing in the nature of a will in exercise of a power, and also a disposition by will and testament, or devise of the custody and tuition of any child, by virtue of *The Infants' Act*, and any other testamentary disposition. Rev. Stat. c. 153.

RETIREMENT OF TRUSTEES.

3.—(1) Where there are more than two trustees if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, consent by deed to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act without any new trustee being appointed in his place. Retirement of trustees.
Imp. Act.
56-57 Vict.
c. 53, s. 11.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done. Execution and performance of requisite deeds and acts.

(3) This section shall not apply to executors or administrators. Application of section.

APPOINTMENT OF NEW TRUSTEES.

4.—(1) Where a trustee either original or substituted dies or remains out of Ontario for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, the person nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust, or if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may by writing appoint another person or other persons to be a trustee or trustees in the place of the trustee Power of appointing new trustees.
Imp. Act.
56-57 Vict.
c. 53, s. 10.

dying, remaining out of Ontario, desiring to be discharged, refusing or being unfit or incapable.

Power of
the Court to
appoint new
trustees.

Imp. Act,
56-57 Vict.
c. 53, s. 25.

(2) Whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, the Supreme Court may make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee; and in particular, and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of an indictable offence, or is bankrupt or insolvent.

Limitation of
effect of order.

(3) An order under subsection 2 and any consequential vesting order or conveyance shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under a power for that purpose contained in an instrument would have operated.

No power to
appoint a per-
sonal repre-
sentative.

(4) Nothing in this section shall give power to appoint a personal representative.

What may
be done.
Imp. Act,
56-57 Vict.
c. 53, s. 10.

(5) On the appointment of a new trustee for the whole or any part of trust property:

Increase in
number.

(a) The number of trustees may be increased; and

Separate trus-
tees for
distinct
trusts.

(b) A separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first mentioned part; and

Where not
less than two
to be
appointed.

(c) It shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and

Execution and
performance
of requisite
deeds and
acts.

(d) Any assurance or thing requisite for vesting the trust property, or any part thereof, in the person who is the trustee, or jointly in the persons who are the trustees, shall be executed or done.

(6) Every new trustee so appointed, as well before as after the trust property becomes by law or by assurance or otherwise vested in him, shall have the same powers, authorities and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Powers of
new trustee.

(7) The provisions of this section relative to a trustee who is dead shall include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee shall include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

Application of
section.

(8) This section is subject to the provisions of section 20 of *The Loan and Trust Corporations Act*. 1 Geo. V. c. 26, s. 4.

Application to
certain Trust
Companies.
Rev. Stat.
c. 124.

VESTING INSTRUMENTS.

5.—(1) Where an instrument, executed after the first day of July, 1886, by which a new trustee is appointed to perform any trust, contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any personal estate so subject, shall vest in the person or persons who, by virtue of such instrument, shall become and be the trustee or trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in him, or in them as joint tenants, and for the purposes of the trust, that estate, interest or right.

Vesting of
trust property
in new or
continuing
trustees
without con-
veyance.

Imp. Act,
56-57 Vict.
c. 53, s. 12.

(2) Where such an instrument, by which a retiring trustee is discharged under this Act, contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

On retirement
of a
trustee.

(3) This section shall not extend to land conveyed by way of mortgage for securing money subject to the trust, or to any share, stock, annuity, or property transferable only in books kept by a company or other body, or in manner prescribed by or under an Act of Parliament or of this Legislature.

Application to
mortgages,
stocks, shares,
etc.

See 56 & 57
Vict. Imp. c.
53, s. 12 (3).

(4) For the purpose of registration the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act. 1 Geo. V. c. 26, s. 5.

Interpretation
for registration
purposes.

Vesting orders
as to land,
where Court
may make.

VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS,
AS TO LAND.

Imp. Act,
56-57 Vict.
c. 53, s. 26.

6.—(1) In any of the following cases:—

- (a) Where the Supreme Court appoints or has appointed a new trustee; or
- (b) Where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person is an infant, or is out of Ontario, or cannot be found; or
- (c) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; or
- (d) Where it is uncertain whether the last trustee known to have been entitled to or possessed of any land is living or dead; or
- (e) Where there is no heir or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; or
- (f) Where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required by or on behalf of a person entitled to require a conveyance of the land or a release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for fourteen days after the date of the requirement;—

the Supreme Court may make an order, in this Act called a vesting order, vesting the land in any such person in any such manner, and for any such estate, as the Court may direct, or releasing, or disposing of the contingent right to such person as the Court may direct.

Vesting of
estate.

(2) Where the order is consequential on the appointment of a new trustee the land shall be vested, for such estate as the Court may direct, in the persons who, on the appointment, are the trustees.

Where trustee
out of Ontario.

(3) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of Ontario or cannot be found, the land or right shall be vested in such other person, either alone or with some other person. 1 Geo. V. c. 26, s. 6.

[For provisions as to lunatic trustee or mortgagee, see *The Lunacy Act, Rev. Stat. c. 68, s. 26.*]

7. Where any land is subject to a contingent right in an unborn person, or a class of unborn persons, who, on coming into existence, would, in respect thereof, become entitled to or possessed of the land on any trust, the Supreme Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person, or class of unborn persons, would, on coming into existence, be entitled or possessed in the land. 1 Geo. V. c. 26, s. 7.

Orders as to
contingent
rights of
unborn
persons.

Imp. Act,
56-57 Vict.
c. 53, s. 27.

8. Where any person entitled to or possessed of land, or entitled to any contingent right in land, by way of security for money, is an infant, the Supreme Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee. 1 Geo. V. c. 26, s. 8.

Vesting order
in place of
conveyance
by infant
mortgagee.

Imp. Act,
56-57 Vict.
c. 53, s. 28.

9. Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last mentioned person consents to an order for the reconveyance of the land the Supreme Court may make an order vesting the land in such person or persons, in such manner, and for such estate as the Court may direct, in any of the following cases:—

Vesting order
in place of
conveyance by
heir or devisee
of heir, etc.,
or personal
representative
of mortgagee.

Imp. Act,
56-57 Vict.
c. 53, s. 29.

- (a) Where an heir, or personal representative, or devisee, of the mortgagee is out of Ontario or cannot be found; or
- (b) Where an heir, or personal representative, or devisee of the mortgagee, on demand made by or on behalf of a person entitled to require a conveyance of the land, has stated in writing that he will not convey the same, or does not convey the same for the space of fourteen days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled; or
- (c) Where it is uncertain which of several devisees of the mortgagee was the survivor; or
- (d) Where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir or personal representative of the mortgagee, whether he is living or dead; or
- (e) Where there is no heir or personal representative of a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or personal representative or devisee. 1 Geo. V. c. 26, s. 9.

Vesting order consequential on judgment, for sale, or mortgage of land.

Imp. Act, 56-57 Vict. c. 53, s. 30.

10. Where any court gives a judgment or makes an order directing the sale or mortgage of any land every person who is entitled to or possessed of the land or entitled to a contingent right therein as heir, or under the will of a deceased person, for payment of whose debts the judgment was given or order made, and is a party to the action or proceeding in which the judgment or order, was given or made, or is otherwise bound by the judgment or order shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act; and the Supreme Court may make an order vesting the land, or any part thereof, for such estate as that Court thinks fit in the purchaser, or mortgagee, or in any other person. 1 Geo. V. c. 26, s. 10.

Vesting order consequential on judgment for specific performance, etc.

Imp. Act, 56-57 Vict. c. 53, s. 31.

11. Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange of any land, or generally where any judgment is given for the conveyance of any land, either in cases arising out of the doctrine of election, or otherwise, the Supreme Court may declare that any of the parties to the action are trustees of the land, or any part thereof, within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will, or voluntary settlement, of any person deceased, who was during his lifetime a party to the contract or transactions concerning which the judgment was given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and thereupon the Supreme Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees. 1 Geo. V. c. 26, s. 11.

EFFECT OF VESTING ORDERS OF LAND.

Effect of vesting order.

Imp. Act, 56-57 Vict. c. 53, s. 32.

12. A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such estate as the Supreme Court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such estate as the Court directs, and shall in every other case have the same effect as if the trustee, or other person, or description or class of persons, to whose rights or supposed rights such provisions relate, had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order. 1 Geo. V. c. 26, s. 12.

Orders made upon certain allegations to be conclusive evidence.

13. Where a vesting order is made as to any land under this Act, founded on an allegation of the personal incapacity of a trustee, or a mortgagee, or on an allegation that a trustee,

or the heir, or personal representative, or devisee, of a mortgagee is out of Ontario or cannot be found, or that it is uncertain which of the several trustees, or which of several devisees of a mortgagee was the survivor, or whether the last trustee, or the heir or personal representative, or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section shall not prevent the Supreme Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained. 1 Geo. V. c. 26, s. 13.

Imp. Act,
56-57 Vict.
c. 53, s. 40.

APPOINTMENT OF PERSONS TO CONVEY.

14. Where a vesting order may be made under any of the foregoing provisions the Supreme Court may, if it is more convenient, by order appoint a person to convey the land or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision. 1 Geo. V. c. 26, s. 14.

Power to
appoint per-
sons to convey.

Imp. Act,
56-57 Vict.
c. 53, s. 33.

VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS, AS TO STOCKS, AND CHOSSES IN ACTION.

15.—(1) In any of the following cases:—

(a) Where the Supreme Court appoints, or has appointed, a new trustee; or

Vesting orders
as to stock
and choses in
action, when
court may
make.

(b) Where a trustee entitled alone, or jointly with another person, to stock, or to a chose in action—

Imp. Act,
56-57 Vict.
c. 53, s. 35.

(i) is an infant, or

(ii) is out of Ontario, or

(iii) cannot be found, or

(iv) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover, a chose in action, according to the direction of the person absolutely entitled thereto, for fourteen days next after a request in writing has been made to him by the person so entitled, or

(v) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover a chose in action for fourteen days next after an order of the Supreme Court for that purpose has been served on him; or

- (c) Where it is uncertain whether a trustee entitled alone, or jointly with another person to stock, or to a chose in action is alive or dead,

the Supreme Court may make an order vesting the right to transfer, or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for, or recover a chose in action, in any such person as the Court may appoint.

(2) Where the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees.

(3) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last mentioned person either alone, or jointly with any other person whom the Court may appoint.

Appointment
of person to
transfer.

(4) Where a vesting order may be made under this section the Court may, if it is more convenient, appoint some proper person to make, or join in making, the transfer.

Transfer, how
to be made.

(5) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act may transfer the stock to himself, or any other person, according to the order, and all incorporated banks and all companies shall obey every order made under this section.

After notice
of order, no
transfer to be
made contrary
thereto.

(6) After notice in writing of an order under this section it shall not be lawful for any incorporated bank or any company to transfer any stock to which the order relates, or to pay any dividends thereon except in accordance with the order.

Court may
make declara-
tion.

(7) The Supreme Court may make declarations and give directions concerning the manner in which the right to any stock, or chose in action, vested under the provisions of this Act, is to be exercised.

Ships, shares
in.

Imp. Act,
56-57 Vict.
c. 53, s. 35.

(8) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock. 1 Geo. V. c. 26, s. 15.

[For provisions as to lunatic trustee or mortgagee, see *The Lunacy Act, Rev. Stat. c. 68, s. 27.*]

EFFECT OF VESTING ORDERS ON CHOSSES IN ACTION.

Effect of
vesting order.

Imp. Act,
56-57 Vict.
c. 53, s. 32.

16. Where any order has been made under the provisions of this Act by the Supreme Court vesting the legal right to sue for or recover any chose in action, or any interest in respect thereof, in any person, he may carry on, commence and prosecute in his own name any action or proceeding for the recovery of such chose in action in the same manner and

with the same rights as the person in whose place he has been appointed. 1 Geo. V. c. 26, s. 16.

TRUSTEES FOR CHARITIES.

17. The Supreme Court may exercise the powers herein conferred for the purpose of vesting any land or personal estate in the trustee of any charity or society over which the Court would have jurisdiction upon action duly instituted. 1 Geo. V. c. 26, s. 17.

Exercise of powers in favour of charities, etc.

Imp. Act, 56-57 Vict. c. 53, s. 39.

18.—(1) Where land is held by trustees for a charitable purpose and it is made to appear that the land can be no longer advantageously used for such charitable purpose or that for any other reason the land ought to be sold, a Judge of the Supreme Court may make an order authorizing the sale thereof and may give such directions in relation thereto and for securing the due investment and application of the money arising from the sale as may be deemed proper.

Power to order a sale in proper cases.

(2) No such order shall be made unless and until notice of the application has been given to the Attorney-General of Ontario. 3-4 Geo. V. c. 18, s. 25 (2).

Notice to Attorney-General.

WHO MAY APPLY.

19.—(1) An order under this Act for the appointment of a new trustee, or concerning any land or personal estate subject to a trust, may be made upon the application of any person beneficially interested therein, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof.

Who may apply for appointment of new trustee, or vesting order, etc.

Imp. Act, 13 & 14 Vict. c. 60, ss. 37, 40 and 41.

(2) An order concerning any land or personal estate, subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by the mortgage.

In case of mortgaged property.

(3) Any person entitled may apply, upon notice to such persons as he may think proper, for such an order as he may deem himself entitled to.

Notice.

(4) Upon the hearing of the application the Court may direct a reference to inquire into any facts which require investigation, or may direct the application to stand over to enable further evidence to be adduced or further notice to be served. 1 Geo. V. c. 26, s. 18.

Hearing of application.

CERTAIN POWERS AND RIGHTS OF TRUSTEES.

Purchase and Sale.

20. Subject to the provisions of *The Devolution of Estates Act* where a trust for sale or a power of sale of land or personal estate is vested in a trustee he may sell or concur with

Power and discretion of trustee for sale. Rev. Stat. c. 119.

Imp. Act, 56-57
Vict. c. 53, s.
13, part.

any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract subject to such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss. 1 Geo. V. c. 26, s. 19.

Sales by
trustees not
impeachable
on certain
grounds.
Imp. Act,
56-57 Vict.
c. 53, s. 14.

21.—(1) No sale made by a trustee after the 4th day of May, 1891, shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

Collusion
between pur-
chaser and
trustee.

(2) No such sale shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for the sale was made.

Objections to
title by
purchaser.

(3) No purchaser, upon any such sale, shall make any objection against the title upon this ground. 1 Geo. V. c. 23, s. 20.

Agents.

Power to
authorize
receipt of
money by
Solicitor.

22.—(1) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust.

Or banker.
Imp. Act,
56-57 Vict.
c. 53, s. 17.

(2) A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance or otherwise.

Appointment
not a breach
of trust.

(3) A trustee shall not be charged with a breach of trust by reason only of his having made or concurred in making any such appointment.

Liability of
trustee, in cer-
tain cases,
not affected.

(4) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor to pay or transfer the same to the trustee.

Application
of section.

(5) This section shall apply only where the money or valuable consideration or property was or is received on or after the 4th day of May, 1891. 1 Geo. V. c. 26, s. 21.

Insurance.

23.—(1) A trustee may insure against loss or damage by fire, tempest or other casualty any building or other insurable property to any amount, including the amount of any insurance already on foot, not exceeding three-fourths of the value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

Power to insure buildings.
Imp. Act, 56-57 Vict. c. 53, s. 18.

(2) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so. 1 Geo. V. c. 26, s. 22.

Application.

Renewals of Leases.

24.—(1) A trustee of any leaseholds for lives or years which are renewable from time to time may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same land on reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite; but where, by the terms of the settlement or will, the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

Power of trustees of renewable leaseholds to renew.
Imp. Act, 56 & 57 Vict. c. 53, s. 19.

(2) If money is required to pay for the renewal the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the land to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose he may raise the money required by mortgage of the land to be comprised in the renewed lease, or of any other land for the time being subject to the uses or trusts to which that land is subject, and no person advancing money upon a mortgage purporting to be made under this power shall be bound to see that the money is wanted, or that no more is raised than is wanted for the purpose or to see to the due application of the money. 1 Geo. V. c. 26, s. 23.

And to raise money for the purpose.

Passing of Accounts.

25. A trustee desiring to pass the accounts of his dealings with the trust estate may file his accounts in the office of the Surrogate Court of a county or district in which he

When trustee may file accounts.

or a co-trustee is resident or in which any part of the trust estate is situate, and the proceedings and practice upon the passing of such accounts shall be the same and have the like effect as the passing of executors' or administrators' accounts in the Surrogate Court; but in the case of trustees under a will the accounts shall be filed and passed in the office of the Surrogate Court by which probate of the will was granted. 1 Geo. V. c. 26, s. 24.

Receipts.

Receipts of trustees to be effectual discharges.

26. The payment of any money to and the receipt thereof by any person to whom the same is payable upon any trust, or for any limited purpose, and such payment to and receipt by the survivor or survivors of two or more mortgagees or holders or the executors or administrators of such survivor or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof. 1 Geo. V. c. 26, s. 25. [*See also The Mortgages Act, Rev. Stat. c. 112, s. 10.*]

Surviving Trustee.

Powers of two or more trustees.

Imp. Act.
56 & 57 Vict.
c. 53, s. 22.

27. Where a power or trust is hereafter given to or vested in two or more trustees jointly it may be exercised or performed by the survivor or survivors of them for the time being. 1 Geo. V. c. 26, s. 26.

INVESTMENTS.

Power to invest trust moneys in certain securities.

28.—(1) A trustee having money in his hands, which it is his duty, or which it is in his discretion, to invest at interest, may invest the same in the stock, debentures or securities of the Dominion of Canada, or of Ontario or of any of the other Provinces of Canada or in debentures or securities the payment of which is guaranteed by the Dominion of Canada or by Ontario or by any of the other Provinces of Canada or in the debentures of any municipal corporation in Ontario, including debentures issued for public school purposes, or in securities which are a first charge on land held in fee simple in Ontario, Manitoba, Saskatchewan or Alberta, provided that such investments are in other respects reasonable and proper.

Existing investments legalized.

(2) Subject to the proviso in subsection 1 any money already invested in any such stock, debentures or securities shall be deemed to have been lawfully and properly invested. 1 Geo. V. c. 26, s. 27. [*See also The Loan and Trust Corporations Act, Rev. Stat. c. 184, s. 18 (f).*]

Investment of trust funds.

29.—(1) A trustee may deposit money with any of the societies or companies hereinafter mentioned, or may invest any money which it is his duty, or which it is in his discretion, to invest at interest, in terminable debentures or debenture stock of any such society or company, provided that such

deposit or investment is in other respects reasonable and proper, and that the debentures are registered, and are transferable only on the books of the society or company in his name as trustee for the particular trust estate for which they are held, and that the deposit account in the society's or company's ledger is in the name of the trustee for the particular trust estate for which it is held and the deposit receipt or pass book is not transferable by endorsement or otherwise:

- (a) Any incorporated society or company authorized to lend money upon mortgages on real estate, or for that purpose and other purposes, having a capitalized, fixed, paid up and permanent stock not liable to be withdrawn therefrom of not less than \$400,000, and a reserve fund of not less than 25 per cent. of its paid up capital, and the stock of which has a market value of not less than 7 per cent. premium; or

- (b) Any society or company heretofore incorporated under Chapter 164 of the Revised Statutes of Ontario, 1877, or any Act incorporated therewith, or under Chapter 169 of the Revised Statutes of Ontario, 1887, having a capitalized, fixed, paid up, and permanent stock not liable to be withdrawn therefrom of not less than \$200,000, and a reserve fund of not less than 15 per cent. of its paid up capital, and the stock of which has a market value of not less than 7 per cent. premium.

(2) Clause (a) shall not apply to any society or company which has not the approval of the Lieutenant-Governor in Council as one coming within the provisions of that clause, and as one in the debentures or debenture stock of which trustees may invest or with which they may deposit money.

(3) Such approval shall not be given with respect to any society or company which does not appear to have kept strictly within its legal powers as to borrowing and investing.

(4) An Order in Council made under the authority of subsection 2 may at any time be revoked. 1 Geo. V. c. 26, s. 28.

30. A trustee may from time to time vary or transpose any securities in which money in his hands is invested, whether under the authority of this Act or otherwise, into or for any other securities of any nature authorized by this Act. 1 Geo. V. c. 26, s. 29.

31. A trustee lending money upon the security of any property upon which he may lawfully lend shall not be chargeable with breach of trust by reason only of the portion borne by the amount of the loan to the value of the

Imp. Act,
51-52 Vict.
c. 59, s. 4.

property at the time when the loan was made, if it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be a competent valuator, instructed and employed independently of any owner of the property, whether such valuator carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed one-half of the value of the property as stated in the report and that it was made under the advice of the valuator expressed in the report. 1 Geo. V. c. 26, s. 30.

Trustee lending more than authorized amount.

Imp. Act,
57-58 Vict.
c. 53, s. 9.

32. Where a trustee has improperly advanced money on a mortgage security which would, at the time of the investment, have been a proper investment in all respects for a less sum than was actually advanced the security shall be deemed an authorized investment for such less sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest. 1 Geo. V. c. 26, s. 31.

Application of secs. 31 and 32.

33. Sections 31 and 32 shall apply to transfers of existing securities as well as to new securities, and to investments made as well before as on and after the 4th day of May, 1891, unless some action or other proceeding was pending with reference thereto at that date. 1 Geo. V. c. 26, s. 32.

Liability in case of change of character of investment.

Imp. Act,
57-58 Vict.
c. 10, s. 4.

34. A trustee shall not be chargeable with breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the instrument of trust or by the general law, and this provision shall apply to cases arising either before or after the passing of this Act. 1 Geo. V. c. 26, s. 33.

[As to investment of money received for infants under Life Assurance Policies, see *The Ontario Insurance Act, Rev. Stat. c. 183, s. 175.*]

PROTECTION AND INDEMNITY.

Extent of liability of trustees.

Imp. Act,
56-57 Vict.
c. 53, s. 24.

35. A trustee shall be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any banker, broker or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default; and may reimburse himself or pay or discharge out of the trust property all expenses incurred in or about the execution of his trust or powers. 1 Geo. V. c. 26, s. 34.

[Note.—As to payments made and acts done under revoked powers of attorney, see *The Powers of Attorney Act, Rev. Stat. c. 106, s. 3.*]

36.—(1) Where a trustee commits a breach of trust, at the instigation or request or with the consent in writing of a beneficiary, the Supreme Court may make such order as to the Court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

Trustees committing breach of trust at instigation of beneficiary.
Imp. Act, 56-57 Vict. c. 53, s. 45.

(2) This section shall apply notwithstanding that the beneficiary is a married woman entitled for her separate use and restrained from anticipation. 1 Geo. V. c. 26, s. 35.

Application to separate estate of married women.

TECHNICAL BREACHES OF TRUST.

important
37. If in any proceeding affecting a trustee or trust property it appears to the court that a trustee, or that any person who may be held to be fiduciarily responsible as a trustee, is or may be personally liable for any breach of trust when-
ever the transaction alleged or found to be a breach of trust occurred, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the court in the matter in which he committed such breach, the court may relieve the trustee either wholly or partly from personal liability for the same.
1 Geo. V. c. 26, s. 36.

Relief of trustees committing technical breach of trust.

Imp. Act, 59-60 Vict. c. 35, s. 3.

[As to limitation of actions against trustees, see *The Limitations Act, Rev. Stat. c. 75, ss. 46-48.*]

PAYMENT INTO COURT.

38.—(1) Where any money or securities belonging to a trust are in the hands or under the control of or are vested in a sole trustee or several trustees, and it is the desire of such trustee, or of the majority of such trustees, to pay the money into or to deposit the securities in court, the Supreme Court, on an *ex parte* application in Chambers, may order the payment into or deposit in court to be made by the sole trustee, or by the majority of the trustees, without the concurrence of the other or others if such concurrence cannot be obtained.

Payment into court by trustees of trust funds or securities by order of Supreme Court.

Imp. Act, 56-57 Vict. c. 53, s. 42.

(2) Where, on the passing of the final accounts of a personal representative, guardian or trustee by the Judge of a Surrogate Court, there is found to be in the hands of such personal representative, guardian or trustee any money belonging to an infant, or to a lunatic or person of unsound mind, or to a person whose address is unknown, it shall be the duty of such personal representative, guardian or trustee to pay the money into the Supreme Court to the credit of the person who is entitled to it.

Money found to be due infant, etc., on final passing of accounts in Surrogate Court to be paid into Court.

(3) A certified copy of the order or report of the Judge shall be left with the Accountant when the money is paid in, and the person paying it in shall be entitled to deduct \$5 for his costs.

Accountant to be furnished with copy of order, etc.

Date of infant
attaining
majority to
be shown.

(4) If an infant is entitled to the money and the date when he will attain his majority does not appear on the face of the order an affidavit stating when he will attain his majority shall be left with the Accountant when the money is paid in, unless the affidavit is dispensed with by the *fiat* of a Judge of the Supreme Court and notice of the payment into court shall be served upon the Official Guardian. 3-4 Geo. V. c. 18, s. 25 (1).

Payment or
delivery to a
majority of
several
trustees.

(5) Where any such money or securities are deposited with a banker or broker or other depository the court may order payment or delivery thereof to the majority of the trustees for the purpose of payment into or deposit in court, and every transfer, payment and delivery, made in pursuance of such order, shall be valid and take effect as if the same had been made on the authority, or by the act, of all the persons entitled to the money and securities so transferred, paid or delivered.

Imp. Act,
56-57 Vict.
c. 53, s. 42.

Payment into
court by per-
sons holding
trust moneys
for trustee.

(6) Any person with whom trust money or securities have been deposited or to whose hands trust money or securities have come, where the trustee has been absent from Ontario for a year and is not likely to return at an early date, or in the event of the trustee's death, or where the trustee in Ontario cannot give an acquittance of the money or securities, may make an application similar to that authorized by subsection 1.

Moneys
charged on
land, stock,
etc., to which
infant, or
lunatic,
entitled.

Imp. Act,
13 & 14 Vict.
c. 60, s. 48.

(7) Where an infant, lunatic or person of unsound mind is entitled to any money payable in discharge of any land or personal estate, conveyed, assigned or transferred under this Act, the person by whom such money is payable may pay the same into the Supreme Court in trust in any cause then depending concerning such money, or, if there is no such cause, to the credit of such infant, lunatic or person of unsound mind.

Certificate of
officer as
discharge.

(8) The certificate or receipt of the proper officer shall be a sufficient discharge for the money or securities so paid into or deposited in court.

Disposition.

(9) Money or securities ordered to be paid into or deposited in court shall, subject to Rules of Court, be dealt with according to the order of the court. 1 Geo. V. c. 26, s. 37.

PROCEDURE ON PAYING MONEY INTO COURT.

Applications
to pay money
into Court.

39.—(1) Subject to Rules of Court the following procedure shall be observed:—

Material.

On an application to pay money into or to deposit securities in court, under this Act, the applicant shall file an affidavit entitled in the Supreme Court, "*In the matter of (specifying shortly the trust and the instrument creating it),*" which affidavit shall set forth—

- (a) The deponent's name and address;
- (b) The amount and description of the money or securities in question;
- (c) A statement whether the estate or succession duty, if chargeable, or any part thereof has been paid;
- (d) The names and addresses, as far as known to the deponent, of all persons interested in or entitled to the money or securities in question, and to the best of his knowledge and belief whether or not such persons are under any disability, by reason of infancy, or unsoundness of mind;
- (e) His submission to answer all such questions relating to the application of the money and securities in question as the Court or a Judge thereof may make or direct;
- (f) The place where he is to be served with any petition, notice, or other proceeding, relating to the money or securities in question;
- (g) A concise statement of the reason why the application is made and of the material facts.

(2) Every order made on such application shall direct the applicant forthwith to give notice thereof, by registered post, to the several persons who are, as stated in his affidavit, interested in or entitled to the money or securities paid into or deposited in court, except such as are infants, lunatics or persons of unsound mind, for whom notice shall be given to the Official Guardian.

To whom
notice to be
given.

(3) It shall be the duty of the Official Guardian, whenever practicable, forthwith to communicate to the parents, guardians, or committee of any person, on whose behalf he may be so notified, the contents of such order.

Duty of
Official
Guardian.

(4) The notice of an order may be in the following form:

Form of
notice.

In the Supreme Court of Ontario.

In the matter of (*specifying trusts, etc., as in the affidavit*).

Take notice that pursuant to the order of the Court dated the _____ day of _____ I have paid into Court to the credit of the above mentioned matter \$ _____ [or I have deposited in Court to the credit of the above mentioned matter the following securities (*specifying them*)] in which money [or securities] you appear to be interested as (*stating shortly how, e.g., as legatee under the will of A.B.*)

Dated this _____ day of _____ 19____
Signature of applicant, in person,
or by his Solicitor.

(5) Notice of all applications respecting money or securities paid into or deposited in court, under this Act, shall be served on the trustee, and the persons directed to be not-

Service of
notice, on
whom.

ified of such payment or deposit, unless such service is dispensed with by the court. 1 Geo. V. c. 26, s. 38.

PERSONAL REPRESENTATIVES AND DEVISEES IN TRUST.

Removal of Personal Representatives.

Power of
Court to
remove.

40.—(1) The Supreme Court may remove a personal representative upon any ground upon which such Court may remove any other trustee, and may appoint some other proper person or persons to act in the place of the executor or administrator so removed.

Security by
person
appointed.
Rev. Stat.
c. 62.

(2) Any person so appointed shall, unless the Court otherwise orders, give such security as he would be required to give if letters of administration were granted to him under *The Surrogate Courts Act*.

Who may
apply.

(3) The order may be made upon the application of any executor or administrator desiring to be relieved from the duties of the office, or of any executor or administrator complaining of the conduct of a co-executor or co-administrator, or of any person interested in the estate of the deceased.

Procedure.

Rev. Stat. c. 56.

(4) Subject to any rules to be made under *The Judicature Act* the practice in force for the removal of any other trustee shall be applicable to proceedings to be taken in the Supreme Court under this section.

When new
appointment
unnecessary.

(5) Where the executor or administrator removed is not a sole executor or administrator the Court need not, unless it sees fit, appoint any person to act in the room of the person removed, and if no such appointment is made the rights and estate of the executor or administrator removed shall pass to the remaining executor or administrator as if the person so removed had died.

Chain of
representation.

(6) The executor of any person appointed an executor under this section shall not by virtue of such executorship be an executor of the estate of which his testator was appointed executor under this section, whether such person acted alone or was the last survivor of several executors.

Copy of order
to be filed
with Surro-
gate Clerk.

(7) A certified copy of the order of removal shall be filed with the Surrogate Clerk, and another copy with the Registrar of the Surrogate Court by which probate or administration was granted, and such officers shall, at or upon the entry of the grant in the registers of their respective offices, make in red ink a short note giving the date and effect of the order, and shall also make a reference thereto in the index of the register at the place where such grant is indexed.

Endorsement.

(8) The date of the grant shall be endorsed on the copy of the order filed with the Surrogate Clerk. 1 Geo. V. c. 26, s. 39.

RIGHTS AND LIABILITIES OF PERSONAL REPRESENTATIVES

41.—(1) Except in cases of libel and slander, the executor or administrator of any deceased person may maintain an action for all torts or injuries to the person or to the property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, have been entitled to do; and the damages when recovered shall form part of the personal estate of the deceased.

Actions by
executors and
administrators
for torts.

(2) Except in cases of libel and slander, if a deceased person committed a wrong to another in respect of his person or property, the person wronged may maintain an action against the executor or administrator of the person who committed the wrong.

Actions
against
executors and
administrators
for torts.

(3) An action under this section shall not be brought after the expiration of one year from the death of the deceased.

Limitations of
actions.

1 Geo. V. c. 26, s. 40.

[As to actions and distress for rent by personal representatives see *The Landlord and Tenant Act, Rev. Stat. c. 155, s. 59*, and as to liability of personal representatives of a deceased joint contractor see *The Mercantile Law Amendment Act, Rev. Stat. c. 133, s. 5*.]

42. A personal representative shall have an action of account as the testator or intestate might have had if he had lived. 1 Geo. V. c. 26, s. 41.

Action of
account.
13 Edw. I
(St. 1 West-
minster, c. 23.

[As to assignment and discharge of mortgages by executors, etc., see *The Mortgages Act, Rev. Stat. c. 112, s. 10*.]

43. Subject to the provisions of *The Devolution of Estates Act*, where a testator, by his will, devises or directs land to be sold by his executors a sale may be validly made by such one or more of the executors to whom probate of the will has been granted, and a conveyance by such executor or executors shall be as valid and effectual as if all the executors named in the will had joined therein. 1 Geo. V. c. 26, s. 42.

Rev. Stat.
c. 119.

Executor's
power to
sell.
21 Henry
VIII. c. 4,
s. 1.

Execution of Powers.

44. Where there is in a will a direction, express or implied, to sell, dispose of, appoint, mortgage, incumber or lease any land, and no person is by the will or otherwise by the testator appointed to execute and carry the same into effect the executor, if any, named in such will may execute and carry into effect every such direction in respect of such land, and any estate or interest therein in the same manner and with the same effect as if he had been appointed by the testator for that purpose. 1 Geo. V. c. 26, s. 43.

Who may
execute
direction to
sell, etc.,
when no other
person is
appointed.

45. Where from any cause a court of competent jurisdiction has committed to a person, who has given security to

Idem.

Or when no one named in the will to execute powers of sale, etc.

the satisfaction of such court for his dealing with such land and its proceeds, letters of administration with a will annexed which contains an express or implied power to sell, dispose of, appoint, mortgage, incumber or lease any land, whether such power is conferred on an executor named in the will or the testator has not by the will or otherwise appointed a person to execute it, the administrator may exercise the power in respect of such land in the same manner and with the same effect as if he had been appointed by the testator for that purpose. 1 Geo. V. c. 26, s. 44.

Contract of Deceased.

Conveyance by personal representative in pursuance of a contract by deceased.

46. Where any person has entered into a contract in writing for the sale and conveyance of land, and such person has died intestate, or without providing by will for the conveyance of such land to the person entitled or to become entitled to such conveyance, if the deceased would be bound, were he alive, to execute a conveyance, his personal representative shall make and give to the person entitled to the same a good and sufficient conveyance of such land, of such nature as the deceased, if living, would be liable to give, but without covenants, except as against the acts of the grantor; and the conveyance shall be as valid and effectual as if the deceased were alive at the time of the making thereof, and had executed the same, but shall not have any further validity or effect. 1 Geo. V. c. 26, s. 45.

Devises in Trust.

Rev. Stat. c. 119
Power to raise money by sale or mortgage to satisfy charges, notwithstanding want of express power in the will.
Imp. Act, 22-23 Vict. c. 35, s. 14.

47.—(1) Subject to the provisions of *The Devolution of Estates Act* where, by any will coming into operation after the eighteenth day of September, 1865, a testator charges his land, or any specific part thereof, with the payment of his debts or with the payment of any legacy or other specific sum of money, and devises the land so charged to a trustee for the whole of his estate or interest therein, and does not make any express provision for the raising of such debt, legacy or sum of money out of such land, the devisee in trust, notwithstanding any trusts actually declared by the testator, may raise such debt, legacy or money by a sale and absolute disposition, by public auction or private contract, of such land or any part thereof, or by a mortgage of the same, or partly by one mode and partly by the other, and in any mortgage so executed may agree to such rate of interest and such period of repayment as he may think proper.

Who may exercise.
Imp. Act, 22-23 Vict. c. 35, s. 15.

(2) The powers conferred by this section shall extend to every person in whom the land devised is for the time being vested by survivorship, descent or devise, and to any person appointed under any power in the will or by the Supreme Court to succeed to the trusteeship vested in such devisee in trust.

(3) If a testator who creates such a charge does not devise the land so charged in such terms that his whole estate and interest therein become vested in a trustee the executor for the time being named in the will, if any, shall have the like power of raising money as is hereinbefore conferred upon the devisee in trust; and such power shall from time to time devolve upon and become vested in the person in whom the executorship is for the time being vested.

Executor's power where there is no sufficient devise.
Imp. Act, 22-23 Vict. c. 35, s. 16.

(4) Any sale or mortgage under this section shall operate only on the estate and interest of the testator.

(5) Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by this section, or any of them, have been duly and correctly exercised by the person acting in virtue thereof.

Purchaser's position.
Imp. Act, 22-23 Vict. c. 35, s. 17.

(6) This section shall not extend to a devise to any person in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, or affect the power of any such devisee to sell or mortgage. 1 Geo. V. c. 26, s. 46.

Saving.
Imp. Act, 22-23 Vict. c. 35, s. 18.

48. Every personal representative, as respects the additional powers vested in him by this Act, and any money or assets by him received in consequence of the exercise of such powers, shall be subject to all the liabilities, and compellable to discharge all the duties which, as respects the acts to be done by him under such powers, would have been imposed upon a person appointed by the testator, or would have been imposed by law upon any person appointed by law, or by any court of competent jurisdiction to execute such power. 1 Geo. V. c. 26, s. 47.

Duties and liabilities of an executor and administrator acting under the powers in this Act.

49. Where there are several personal representatives, and one or more of them die, the powers conferred upon them by this Act shall vest in the survivor or survivors. 1 Geo. V. c. 26, s. 48.

Survivorship.

EFFECT OF REVOCATION OF AN ERRONEOUS GRANT.

50.—(1) Where a court of competent jurisdiction has admitted a will to probate, or has appointed an administrator, notwithstanding that the grant of probate or the appointment may be subsequently revoked as having been erroneously made, all acts done under the authority of such probate or appointment, including all payments made in good faith to or by the personal representative, shall be as valid and effectual as if the same had been rightly granted or made; but upon revocation of the probate or appointment, in cases of an erroneous presumption of death, the supposed decedent, and in other cases the new personal representative may, subject to the provisions of subsections 2 and 3, recover from the person who acted under the revoked grant or appointment any part of the estate remaining in his hands undistrib-

Validity of acts done prior to revocation of erroneous grant.

Recovery of property.

Rev. Stat.
c. 75.

uted, and, subject to *The Limitations Act*, from any person who erroneously received any part of the estate as a devisee, legatee or one of the next of kin, or as a husband or wife of the decedent or supposed decedent, the part so received or the value thereof. 1 Geo. V. c. 26, s. 49.

Expenses.

(2) The person acting under the revoked probate or appointment may retain out of any part of the estate remaining in his hands undistributed his proper costs and expenses incurred in the administration.

Fraud.

(3) Nothing in this section shall protect any person acting as personal representative where he has been party or privy to any fraud whereby the grant or appointment has been obtained, or after he has become aware of any fact by reason of which revocation thereof is ordered unless, in the latter case, he acts in pursuance of a contract for valuable consideration and otherwise binding made before he became aware of such fact. 1 Geo. V. c. 26, s. 49.

Effect. of
payments,
etc., under
revoked
grant.

51. All persons making or permitting to be made any payment or transfer in good faith upon any probate or letters of administration granted by any Surrogate Court in Ontario, in respect of the estate of the deceased, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance affecting the validity of the probate or letters of administration. 1 Geo. V. c. 26, s. 50

ADMINISTRATION OF ESTATES.

Power to pay
debts.

52.—(1) A personal representative may pay or allow any debt or claim on any evidence that he thinks sufficient.

To compound,
etc.

(2) A personal representative, or two or more trustees acting together, or a sole acting trustee, where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of these purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient without being responsible for any loss occasioned by any act or thing done by him or them in good faith, 1 Geo. V. c. 26, s. 51.

Imp. Act,
56-57 Vict.
c. 53, s. 21.

In case of
deficiency of
assets, debts
to rank
pari passu.

53. On the administration of the estate of a deceased person, in the case of a deficiency of assets, debts due to the Crown and to the personal representative of the deceased person, and debts to others, including therein debts by

judgment or order, and other debts of record, debts by specialty, simple contract debts, and such claims for damages as are payable in like order of administration as simple contract debts shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another; but nothing herein shall prejudice any lien existing during the lifetime of the debtor on any of his real or personal property. 1 Geo. V. c. 26, s. 52.

Not to affect
liens.

54.—(1) Where a personal representative, liable as such to the rents, or upon the covenants or agreements contained in a lease or agreement for a lease granted or assigned to the testator or intestate has satisfied all liabilities under the lease or agreement for a lease, which accrued due and were claimed up to the time of the assignment hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease, or agreement for lease, to a purchaser thereof, he may distribute the residuary estate of the deceased to and among the parties entitled thereto, without appropriating any part or any further part thereof, as the case may be, to meet any future liability under such lease or agreement for lease.

As to liability
of executor or
administrator
in respect of
covenants,
etc., in leases.
Imp. Act,
22-23 Vict.
c. 35, s. 27.

(2) The personal representative so distributing the residuary estate shall not be personally liable in respect of any subsequent claim under the lease or agreement for lease.

No personal
liability for
subsequent
claim.

(3) Nothing in this section shall prejudice the right of the lessor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom they have been distributed. 1 Geo. V. c. 23, s. 53.

Right to
follow assets
not affected.

55.—(1) Where a personal representative, liable as such to the rent or upon the covenants or agreements contained in any conveyance on chief rent or rent-charge, whether any such rent is by limitation of use, grant or reservation, or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate, has satisfied all liabilities under the conveyance, or agreement for a conveyance, which accrued due and were claimed up to the time of the conveyance by him hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and has conveyed such property, or assigned such agreement for conveyance to a purchaser thereof, he may distribute the residuary estate of the deceased to and amongst the persons en-

As to liability
of executor in
respect of
rents, etc., in
conveyances
on rent-
charge, etc.
Imp. Act,
22-23 Vict.
c. 35, s. 28.

titled thereto, without appropriating any part, or any further part thereof, as the case may be, to meet any further liability under such conveyance or agreement for conveyance.

No personal liability for any subsequent claim.

(2) A personal representative so distributing the residuary estate shall not be personally liable in respect of any subsequent claim under the conveyance or agreement for conveyance.

Right of grantor, etc., to follow assets not affected.

(3) Nothing in this section shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom they have been distributed. 1 Geo. V. c. 26, s. 54.

Distribution of assets under trust deeds for benefit of creditors, or of the assets or intestate after notice given by trustee, assignee, executor or administrator.

56.—(1) Where a trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally, or of a particular class or classes of creditors, where the creditors are not designated by name therein, or a personal representative has given such or the like notices as, in the opinion of the court, in which such trustee, assignee, or personal representative is sought to be charged, would have been directed to be given by the Supreme Court in an action for the execution of the trusts of such deed or assignment, or in an administration suit, for creditors and others to send in to such trustee, assignee, or personal representative, their claims against the person for the benefit of whose estate of the testator or intestate, as the case may be, at the expiration of the time named in the notices, or the last of the notices, for sending in such claims, he may distribute the proceeds of the trust estate, or the assets of the testator or intestate, as the case may be, or any part thereof amongst the persons entitled thereto, having regard to the claims of which he has then notice, and shall not be liable for the proceeds of the trust estate, or assets, or any part thereof so distributed to any person of whose claim he had not notice at the time of the distribution.

Right of creditor to follow assets not affected.

(2) Nothing in this section shall prejudice the right of any creditor or claimant to follow the proceeds of the trust estate, or assets, or any part thereof into the hands of persons who have received the same. 1 Geo. V. c. 26, s. 55.

[As to contested claims see *The Surrogate Courts Act, Rev. Stat. c. 62, s. 69.*]

Property subject to power, when to be assets.

Exercise of general power by will, effect of.

57. Property over which a deceased person had a general power of appointment, which he might have exercised for his own benefit without the assent of any other person, shall be assets for the payment of his debts where the same is appointed by his will; and, under an execution against the

personal representatives of such deceased person, such assets may be seized and sold after the deceased person's own property has been exhausted. 1 Geo. V. c. 26, s. 56.

UNDISPOSED OF RESIDUE.

58.—(1) When a person dies having by will appointed an executor, such executor, in respect of any residue not expressly disposed of, shall be deemed to be a trustee for the person, if any, who would be entitled to the estate under *The Devolution of Estates Act* in case of an intestacy, unless it appears by the will that the executor was intended to take such residue beneficially.

Executor to be trustee of residue for next of kin. Rev. Stat. c. 119. Imp. Act, 11 Geo. IV. and 1 W. IV. c. 40, s. 1.

(2) Nothing in this section shall prejudice any right in respect of any residue not expressly disposed of to which, if this Act had not been passed, an executor would have been entitled where there is not any person who would be entitled to the testator's estate under *The Devolution of Estates Act* in case of an intestacy. 1 Geo. V. c. 26, s. 57.

Where there is no person entitled to the residue. Imp. Act, 11 Geo. IV. and 1 W. IV. c. 40, s. 2.

RIGHTS AND LIABILITY OF REPRESENTATIVES OF EXECUTORS AND ADMINISTRATORS.

59. Executors of executors shall have the same actions for the debts and property of the first testator as he would have had if in life; and shall be answerable for such of the debts and property of the first testator as they shall recover as the first executors would be if they had recovered the same. 1 Geo. V. c. 26, s. 58.

Rights and liabilities of executors of executors. See 25 Edw. III. Stat. 5, c. 5.

60. The personal representative of any person who, as executor or as executor in his own wrong, or as administrator, wastes or converts to his own use any part of the estate of any deceased person shall be liable and chargeable in the same manner as his testator or intestate would have been if he had been living. 1 Geo. c. 26, s. 59.

Liability of personal representative of one who commits waste. 30 Car. II. c. 7, s. 1. 4 W. & M. c. 24, s. 12.

CONVEYANCE OF LAND SOLD FOR DEBTS.

61.—(1) Where an action or proceeding is instituted in any court for the payment of any debts of any person deceased to which the estate may be subject or liable, and such court orders the estate liable to such debts, or any of them, to be sold or mortgaged for satisfaction of such debts, and, by reason of the infancy of any heir or devisee, an immediate conveyance thereof cannot be compelled such court shall direct, and if necessary compel such infant to convey such estate so to be sold, or mortgaged, by all proper assurances to the purchaser, or mortgagee thereof, and in such manner as the Court shall deem proper and direct, and every such infant shall make such conveyance, or mortgage, accordingly.

Conveyances by infants under order of the court of real estate, directed to be sold for payment of debts. 11 Geo. IV. and 1 W. IV. c. 47, s. 1; 2 and 3 Vict. c. 60, s. 1.

Validity
thereof.

(2) Every such conveyance, or mortgage, shall be as valid and effectual as if such infant was, at the time of executing the same, of the full age of twenty-one years.

Descent of
surplus.
Imp. Act,
2 and 3 Vict.
c. 60, s. 2.

(3) The surplus money from such sale, or mortgage, shall descend in the same manner as the estate so sold, or mortgaged, would have done. 1 Geo. V. c. 26, s. 60.

Persons hav-
ing a life
interest may,
by order of
the Court,
convey the fee
of estates
ordered to be
sold for pay-
ment of debts.
Imp. Act,
11 Geo. IV,
and 1 W. IV.
c. 47, s. 12.

62. Where land is devised in settlement by any person whose estate is by law liable to the payment of any of his debts, and by such devise is vested in any person for life, or other limited interest, with any remainder, limitation, or gift over, which may not be vested, or may be vested in some person from whom a conveyance or other assurance of the same cannot be obtained, or by way of executory devise, and an order is made for the sale thereof for the payment of such debts, or any of them, the court may direct the tenant for life, or other person having a limited interest, or the first executory devisee thereof, to convey, release, assign, surrender, or otherwise assure the fee simple, or other the whole interest so to be sold, to the purchaser, or in such manner as the court may deem proper; and every such conveyance, release, surrender, assignment, or other assurance, shall be as effectual as if the person who makes and executes the same was seized or possessed of the fee simple or other whole estate so to be sold. 1 Geo. V. c. 26, s. 61.

ESTATES OF INSOLVENT DECEASED PERSONS.

Creditor hold-
ing security
to value the
same.

63.—(1) On the administration of the estate of a deceased person, in case of a deficiency of assets, every creditor in proving his claim shall state whether he holds any security for his claim or any part thereof, and shall give full particulars of the same, and if such security is on the estate of the deceased debtor or on the estate of a third person for whom the estate of the deceased debtor is only indirectly or secondarily liable the creditors shall put a specified value on such security, and the personal representative, under the authority of the other creditors of the estate of the deceased, or of the court if the estate is being then administered under the direction of or by a court, may either consent to the creditor's ranking for the claim, after deducting such valuation, or may require from the creditor an assignment of the security at an advance of ten per cent. upon the specified value to be paid out of the estate as soon as the personal representative has realized such security, in which he shall be bound to the exercise of ordinary diligence: and in either case the difference between the value at which the security is retained or taken, as the case may be, and the amount of the claim of the creditor shall be the amount for which he shall rank upon the estate of the deceased debtor.

(2) If the claim of the creditor is based upon a negotiable instrument upon which the estate of the deceased debtor is only indirectly or secondarily liable, and which is not mature or exigible, the creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the person primarily liable thereon, as his security for the payment thereof, but after the maturity of such liability and its non-payment he shall be entitled to amend and re-value his claim. 1 Geo. V. c. 26, s. 62.

64. A creditor holding any such security on the estate of a deceased debtor, or on the estate of a third person for whom the estate of such debtor is only indirectly or secondarily liable, may release or deliver up such security to the personal representative, or he may, by statutory declaration delivered to the personal representative, set a value upon such security; and from the time he shall have so released or delivered up such security or valued the same the debt to which such security applied shall be considered as an unsecured debt of the estate, or as being secured only to the extent of the value set upon such security; and the creditor may rank as and exercise all the rights of an ordinary creditor for the amount of his claim, or to the extent only of so much thereof as exceeds the value set upon such security as the case may be. 1 Geo. V. c. 26, s. 63.

65.—(1) Where a person claiming to be entitled to rank on the estate holds security for his claim, or any part thereof, of such a nature that he is required by this Act to value it, and he fails to value the same, the Judge of the Surrogate Court who granted the probate or letters of administration may, upon summary application by the personal representative, of which application three days' notice shall be given to such claimant, order that unless a specified value shall be placed on such security and notified in writing to the personal representative within a time to be limited by the order such claimant shall, in respect of the claim, or the part thereof for which the security is held, be wholly barred of any right to share in the proceeds of such estate.

(2) If a specified value is not placed on such security and notified in writing to the personal representative according to the exigency of the order, or within such further time as the Judge may allow, the claim or the part thereof, as the case may be, shall be wholly barred as against such estate.

(3) Where an estate is being administered by or under the direction of a court such court shall exercise the jurisdiction conferred by this section upon the Judge of the Surrogate Court. 1 Geo. V. c. 26, s. 64.

[As to priority in respect of wages see *The Wages Act*, *Rev. Stat. c. 143*, s. 6.]

SUMMARY APPLICATION TO COURT FOR ADVICE.

Trustee, etc.,
may apply for
advice in
management
of trust
property.

Imp. Act,
22-23 Vict.
c. 35, s. 30.

Indemnity of
trustee, etc.,
acting as
advised.

66.—(1) A trustee, guardian or personal representative may, without the institution of an action, apply to the Supreme Court in the manner prescribed by Rules of Court, for the opinion, advice or direction of the Court on any question respecting the management or administration of the trust property or the assets of his ward or his testator or intestate.

(2) The trustee, guardian or personal representative acting upon the opinion, advice or direction given shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, guardian, or personal representative, in the subject matter of the application, unless he has been guilty of some fraud, wilful concealment or misrepresentation in obtaining such opinion, advice or direction. 1 Geo. V. c. 26, s. 65.

ALLOWANCE TO TRUSTEES AND PERSONAL REPRESENTATIVES.

Allowance to
trustees, etc.

67.—(1) A trustee, guardian or personal representative, shall be entitled to such fair and reasonable allowance for his care, pains and trouble, and his time expended in and about the estate, as may be allowed by a Judge of the Supreme Court or by any Master or Referee to whom the matter may be referred.

Though
estate not
before the
Court.

(2) The amount of such compensation may be settled although the estate is not before the Court in an action.

Allowance to
executor or
administrator
for services.

(3) The Judge of a Surrogate Court, in passing the accounts of a trustee under a will or of a personal representative or guardian, may from time to time allow to him a fair and reasonable allowance for his care, pains and trouble, and his time expended in or about the estate.

Allowance to
barrister or
solicitor
trustee for
professional
services.

(4) Where a barrister or solicitor is a trustee, guardian or personal representative, and has rendered necessary professional services to the estate regard may be had in making the allowance to such circumstance, and the allowance shall be increased by such amount as may be deemed fair and reasonable in respect of such services.

Where
allowance
fixed by the
instrument.

(5) Nothing in this section shall apply where the allowance is fixed by the instrument creating the trust. 1 Geo. V. c. 26, s. 66.

MISCELLANEOUS.

Trustees buy-
ing or selling.

Rev. Stat.
c. 122.

68. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section 2 of *The Vendors and Purchasers Act*. 1 Geo. V. c. 26, s. 67.

Indemnity.

69. This Act, and every order purporting to be made under it, shall be a complete indemnity to all persons for any acts done pursuant thereto; and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the court by which it was made had jurisdiction to make the same. 1 Geo. V. c. 26, s. 68.

Imp. Acts,
15 and 16
Vict. c.
55, s. 7,
56-57 Vict.
c. 53, s. 49.

See also The Judicature Act, Rev. Stat. c. 56, s. 135.

COSTS.

70. The Supreme Court may order the costs of and incidental to any application, order, direction, conveyance, assignment or transfer under this Act, or any part thereof, to be paid or raised out of the property in respect of which the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as the Court may deem proper. 1 Geo. V. c. 26, s. 30.

Costs may be
ordered to be
paid out of
estate.

Application of Act.

71. Subject to section 72, unless otherwise expressed therein, the provisions of this Act shall apply to all trusts whenever created and to all trustees whenever appointed. 1 Geo. V. c. 26, s. 70.

Application
of Act.

72. The powers, rights and immunities conferred by this Act are in addition to those conferred by the instrument creating the trust, but shall have effect subject to the terms thereof. 1 Geo. V. c. 26, s. 71.

Additional
powers given.

73. Nothing in this Act shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do by the instrument creating the trust. 1 Geo. V. c. 26, s. 72.

Express terms
of trust
instrument to
prevail.

4. CONFIRMATION AND EVIDENCE OF TITLE.

CHAPTER 122.

An Act respecting Vendors and Purchasers and to
simplify Titles.

HIS MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Ontario,
enacts as follows:—

Short title.

1. This Act may be cited as *The Vendors and Purchasers Act*. 10 Edw. VII. c. 58, s. 1.

Rights of
vendors and
purchasers in
contracts of
sale of lands.

2. In the completion of a contract of sale of land the rights and obligations of the vendor and the purchaser shall, subject to any stipulation in such contract to the contrary, be regulated by the following rules:—

Recitals, etc.,
20 years old,
of facts, etc.,
prima facie
evidence.

(a) Recitals, statements and descriptions of facts, matters and parties contained in statutes, deeds, instruments or statutory declarations twenty years old at the date of the contract, unless and except in so far as they are proved to be inaccurate, shall be sufficient evidence of the truth of such facts, matters and descriptions;

Memorials
of discharged
mortgages.

(b) A registered memorial of a discharged mortgage shall be sufficient evidence of the mortgage without the production of the mortgage, unless and except in so far as such memorial is proved to be inaccurate; and the vendor shall not be bound to produce the mortgage unless it is in his possession or power;

Memorials
20 years old,
when, and of
what, evi-
dence.

(c) A registered memorial twenty years old of any other instrument, if the memorial purports to be executed by the grantor, or in other cases if possession has been consistent with the registered title, shall be sufficient evidence without the production of the instrument to which the memorial relates, unless and except in so far as such memorial is proved to be inaccurate; and the vendor shall not be bound to produce the

original instrument unless it is in his possession or power; and the memorial shall be presumed to contain all the material contents of the instrument to which it relates;

- (d) The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title, shall not be an objection to the title if the purchaser will, on the completion of the contract, have an equitable right to the production of such documents. 10 Edw. VII. c. 58, s. 2.

3. In an action it shall not be necessary to produce any evidence which, by section 2, is dispensed with as between vendor and purchaser; and the evidence therein declared to be sufficient as between vendor and purchaser shall *prima facie* be sufficient for the purposes of such action. 10 Edw. VII. c. 58, s. 3.

4. A vendor or purchaser of real or leasehold estate or his representative may, at any time and from time to time, apply in a summary way to the Supreme Court or a Judge thereof in respect of any requisition or objection or any claim for compensation, or any other question arising out of or connected with the contract, except a question affecting the existence or validity of the contract; and the Court or Judge may make such order upon the application as appears just, and refer any question to a Master or other officer for enquiry and report. 10 Edw. VII. c. 58, s. 4.

CHAPTER 123.

An Act for Quieting Titles to Real Estate.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Quieting Titles Act*.
10 Edw. VII. c. 59, s. 1.

Owners, etc.,
in fee simple
may obtain
judicial inves-
tigation of
title. **2.** An owner of an estate in fee simple in land or a trustee for the sale of the fee simple shall be entitled to have his title judicially investigated and the validity thereof ascertained and declared, whether he has the legal estate or not, and whether his title is or is not subject to any charge or incumbrance. 10 Edw. VII. c. 59, s. 2.

In case of any
other estate;
investigation
to be discre-
tionary with
the Judge. **3.** Any other person who has any estate or interest in land may apply for the investigation of his title and a declaration of the validity thereof; but it shall be in the discretion of the Judge before whom the proceedings are taken to grant or refuse the application and such discretion may be invoked and exercised at any stage of the proceedings, and the decision of the Judge in exercising such discretion shall be subject to appeal. 10 Edw. VII. c. 59, s. 3.

Attorney-
General may
apply to quiet
title to Crown
Lands. **4.** His Majesty's Attorney-General for Canada or His Majesty's Attorney-General for Ontario may apply for an investigation of the title of the Crown to any land and a declaration of the validity thereof, and the application may be made by information instead of petition, but in other respects the practice and procedure shall be the same as in ordinary cases. 10 Edw. VII. c. 59, s. 4.

Procedure. **5.** Every application shall be made to the Supreme Court or a Judge thereof and, subject to the provisions of section 4, shall be by petition, Form 1. 10 Edw. VII. c. 59, s. 5.

Form of appli-
cation and to
whom. **6.** The application shall be supported by the following particulars:

How the appli-
cation must be
supported.

Title deeds. (a) The title deeds, if any, and evidences of title in the possession or power of the applicant;

Registered
instruments. (b) Certified copies of all registered instruments, or registered memorials of instruments, affecting the land, or of all since the last judicial certificate,

if any, under this Act, up to the time of the granting of the certificate of title;

- (c) An abstract of the title certified by the registrar of the registry division in which the land lies, unless the same be dispensed with in whole or in part; Registrar's certificate.
- (d) A concise statement of such facts as are necessary to make out the title which do not appear in the produced documents; but no abstract of produced documents shall be required except on special grounds; Statement of facts.
- (e) Proof of any fact which is required to be proved in order to make out the title, and which is not established by the produced documents, unless the Judge dispenses with such proof until a future stage of the investigation; Proof of facts.
- (f) An affidavit or deposition by the person whose title is to be investigated and a certificate of his counsel or solicitor, to the effect hereinafter mentioned, unless the Judge, for special reason, dispenses therewith; Affidavit and certificate of counsel, etc.
- (g) A schedule of the particulars produced under this section. 10 Edw. VII. c. 59, s. 6. Schedule of particulars produced.

7.—(1) The affidavit or deposition of the person whose title is to be investigated shall state that to the best of his knowledge and belief he is the owner of the estate or interest claimed by the petitioner, subject only to the charges and incumbrances set forth in the petition or in a schedule thereto, or that there is no charge or incumbrance affecting the land; that the deeds and evidences of title which he produces, and of which a list is contained in the schedule produced under the next preceding section, are all the title deeds and evidences of title relating to the land in his possession or power, and that he is not aware of the existence of any claim adverse to or inconsistent with his own to any part of the land or to any interest therein; or, if he is aware of such adverse claim, he shall set forth every such adverse claim, and shall depose that he is not aware of any, except what he sets forth. What the affidavit or deposition of the applicant must state.

(2) The affidavit or deposition shall also set forth whether any one is in possession of the land and under what claim, right or title; and shall state that to the best of the deponent's knowledge, information and belief, the affidavit or deposition and the other papers produced therewith fully and fairly disclose all facts material to the title claimed by the petitioner, and all contracts and dealings which affect the same or any part thereof or give any right as against him. As to adverse claims of possession, etc.

In certain cases it may be dispensed with or made by another person.

(3) The affidavit or deposition may be dispensed with, or may be made by some other person instead of the person whose title is to be investigated, or an affidavit or deposition as to part may be made by one person, and as to part by another, in the discretion of the Judge to whom the application is made; and in such case the affidavit shall be modified accordingly. 10 Edw. VII. c. 59, s. 7.

What the certificate of counsel or solicitor must state.

8. The certificate of the counsel or solicitor shall state that he has investigated the title and believes the petitioner to be the owner of the estate which he claims in the land, subject only to any charge or incumbrance set forth in the petition or in the schedule thereto, or that he so believes, subject to any condition, qualification or exemption set forth in the certificate; and that he has conferred with the deponent on the subject of the various matters set forth in the affidavit or deposition referred to in the next preceding two sections and believes the affidavit or deposition to be true. 10 Edw. VII. c. 59, s. 8.

On what evidence Judge may proceed.

9.—(1) The Judge in investigating the title may receive and act upon any evidence that is received by the Supreme Court on a question of title, and any evidence which the practice of conveyancers authorizes to be received on an investigation of a title out of Court; or any other evidence, whether the same is or is not receivable or sufficient in point of strict law or according to the practice of conveyancers, if the same satisfies the Judge of the truth of the facts intended to be established thereby.

Evidence in proceedings to quiet titles. Rev. Stat. c. 122.

(2) It shall not be necessary to produce any evidence which by *The Vendors and Purchasers Act* is dispensed with as between vendor and purchaser, or to produce or account for the originals of any registered deeds, documents or instruments, unless the Judge otherwise directs.

Form of proofs.

(3) The proof may be by affidavit or certificate or may be given orally or in any other manner or form satisfactory to the Judge. 10 Edw. VII. c. 59, s. 9.

Taxes must have been paid except for current year.

10. Before a certificate of title is granted satisfactory evidence shall be given by certificate, affidavit or otherwise, that all taxes, rates and assessments for which the land is liable have been paid, or that all, except those for the current year, have been paid. 10 Edw. VII. c. 59, s. 10.

Further proof if Judge not satisfied.

11. If the Judge is not satisfied with the evidence of title produced in the first instance he shall give a reasonable opportunity to produce further evidence or to remove defects in the evidence produced. 10 Edw. VII. c. 59, s. 11.

Judge to order notice to be published.

12.—(1) Except as hereinafter provided, before a certificate of title is granted or a conveyance is made under this

Act, the Judge shall direct to be published in the *Ontario Gazette*, and if he sees fit in one or more newspapers, and in such form, and for such period as he deems expedient, a notice either of the application having been made, or of the order or decision of the Judge thereon, and the notice shall state the time within which adverse claims may be filed; and the certificate or conveyance shall not be signed or executed until after the expiration of at least four weeks from the first publication of such notice, or such other period as the Judge may appoint.

(2) Where the value of the land is proved to the satisfaction of the Judge to be not more than \$3,000, he may dispense with the publication of the notice and in lieu thereof may direct that for such period as he may think fit a printed or type-written notice of the application, or of the order or decision of the Judge thereon, be posted up in one or more conspicuous places on the land, and in such other place, if any, as he may think fit; and the certificate or conveyance shall not be signed or executed until the period limited by such notice for filing adverse claims shall have expired. Notice of application where land is valued at not more than \$3,000. 10 Edw. VII. c. 59, s. 12.

13. Where the Judge is satisfied respecting the title, and considers that the certificate of title can safely be granted or the conveyance can be safely executed without any other notice of application than the published or posted notice, he may grant the certificate or direct the execution of the conveyance. Judge may grant certificate without further notice. 10 Edw. VII. c. 59, s. 13.

14. Where it appears that there is any person who may have a claim adverse to or inconsistent with that of the petitioner to or in respect of any part of the land, the Judge shall direct such notice as he deems necessary to be mailed to or served on such person, his agent or solicitor. Notice to adverse claimant. 10 Edw. VII. c. 59, s. 14.

15.—(1) Where it appears that any persons who will become the heirs of a living person or that any person not in esse may be interested in opposing the claim of the petitioners, the Judge may appoint a guardian *ad litem* to represent them and they shall be bound by the adjudication. Appointment of guardian ad litem.

(2) The Judge may order that the costs of the guardian *ad litem* be paid by the petitioner. Costs.

(3) Unless the Judge otherwise directs, the official guardian shall be appointed guardian *ad litem*. Who may be guardian. 10 Edw. VII. c. 59, s. 15.

16. Before granting the certificate or directing the execution of the conveyance the Judge may require any further publication to take place, or any other notice to be mailed Further publication or service of notice.

or served which he deems necessary. 10 Edw. VII. c. 59, s. 16.

Adverse claimants to file statements.

17.—(1) Any person having an adverse claim, or a claim not recognized in the petition may at any time before the certificate is granted or the conveyance is executed, file and serve on the petitioner, his solicitor or agent, a statement of his claim, Form 2.

Verification.

(2) The claim shall be verified by an affidavit to be filed therewith. 10 Edw. VII. c. 59, s. 17.

In case of contest, judge may decide or refer the case.

18. In case of a contest, the Judge may either decide the question of title on the evidence before him, or may refer the same or any matter involved therein to a Divisional Court, or may direct any mode of investigation which he deems expedient, and may defer granting the certificate or directing the execution of the conveyance. 10 Edw. VII. c. 59, s. 18.

Security for costs.

19. The Judge may at any stage of the proceeding order security for costs to be given by the petitioner, or by any person making an adverse claim. 10 Edw. VII. c. 59, s. 19.

Payment of costs.

20. The Judge may order costs either as between party and party, or as between solicitor and client, to be paid by or to any party to any proceeding, and may give directions as to the fund out of which any costs shall be paid. 10 Edw. VII. c. 59, s. 20.

Withdrawal of application.

21. The petitioner may by leave of the Judge withdraw his application at any time before final adjudication, on payment of all costs incurred in the investigation, either by himself or by any adverse claimant. 10 Edw. VII. c. 59, s. 21.

Petition may be referred to Master or counsel.

22. Subject to Rules of Court, the Judge may refer a petition or any question arising in the course of any proceeding thereon to any referee of titles or other officer of the Court, or to counsel named by the Judge, who shall proceed as the Judge himself should do, had the reference not been made, and shall have all the powers of the Judge, except the power to grant the certificate or to direct the execution of the conveyance. 10 Edw. VII. c. 59, s. 22.

Claims of title to be presumed to be made with certain exceptions.

23.—(1) Every claim of title under this Act shall be presumed to be subject to the following exceptions and qualifications unless the petition expressly states the contrary:

(a) The reservations, if any, contained in the original grant from the Crown;

- (b) Any municipal charges, rates or assessments theretofore imposed for local improvements and not yet due and payable;
- (c) Any title or lien which, by possession or improvements or other means, the owner or person interested in any adjoining land has acquired to or in respect of the land;
- (d) Any lease or agreement for a lease for a period yet to run, not exceeding three years, where there is actual occupation under the same;
- (e) Any public highway, right of way, water-course and right of water, and other easement;
- (f) Any right of the wife or husband of the petitioner to dower or curtesy.

(2) If the petitioner desires the certificate to declare the title to be free from such exceptions or qualifications, or any of them, the petition shall so state, and the investigation shall proceed accordingly, but this subsection shall not apply to the exception or qualification as to a public highway.
But claim may be without exceptions.
 10 Edw. VII. c. 59, s. 23.

CERTIFICATE OF TITLE.

24. The Judge may give one certificate of title comprising all the land mentioned in the petition, or may give separate certificates as to separate parts of the land.
One certificate or several.
 10 Edw. VII. c. 59, s. 24.

25. The certificate of title, Form 3, shall be under the seal of the Court and shall be signed by a Judge and, where the proceedings on the petition are conducted in Toronto, by the Referee of Titles and in other cases by the Inspector of Titles and shall also be signed by the Clerk of Records and Writs of the Supreme Court, and the same and the schedule, if any, thereto or a duplicate or counterpart of the same shall be registered in full both in the Supreme Court and in the registry office of the registry division where the land lies without any further proof thereof. 10 Edw. VII. c. 59, s. 25.

26. A certificate of the registration in the Supreme Court may be endorsed on the certificate of title, or on any counterpart or certified copy thereof, thus:

"Registered in Page	19 , , A.H.,	Book Clerk of Records and Writs (or as the case may be).
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Registration of certificate.

and a memorandum or certificate so signed shall be evidence of the registration mentioned therein. 10 Edw. VII. c. 59, s. 26.

Effect of certificate of title.

27. The certificate of title, sealed, signed and registered as required by section 25, shall be conclusive, and the title therein mentioned shall be deemed absolute and indefeasible, on and from the date of the certificate, as regards His Majesty and all persons whomsoever, subject only to any charges or incumbrances, exceptions or qualifications mentioned therein or in the schedule thereto, and shall be conclusive evidence that every application, notice, publication, proceeding, consent and act which ought to have been made, given and done before the granting of the certificate, has been made, given and done by the proper person. 10 Edw. VII. c. 59, s. 27.

Certified copy of certificate to be evidence.

28. After a certificate of title is registered a copy thereof purporting to be signed and certified as a copy by the Clerk of Records and Writs, or by the Registrar of the registry division in which the land lies, shall be admissible evidence of the certificate for all purposes without further evidence of such copy, and without accounting for the non-production of the certificate. 10 Edw. VII. c. 59, s. 28.

Conveyance by the Court in case of sale.

29. In case of a sale by the Supreme Court the Court may investigate the title with a view to granting an indefeasible title, and in that case a conveyance, Form 4, executed to the purchaser, under the seal of the Court and purporting to be under the authority of this Act, shall have the same effect as a certificate. 10 Edw. VII. c. 59, s. 29.

Where an indefeasible title is contracted for.

30. Where judgment is given for the specific performance of a contract for the sale of land and it is provided by the contract that the vendor shall give an indefeasible title, the Court may make the like investigation, and the conveyance may be according to Form 4. 10 Edw. VII. c. 59, s. 30.

JUDICIAL INVESTIGATION OF PARTICULAR FACTS AFFECTING TITLES.

Right to judicial investigation of some fact which may affect a title.

31. Where a person domiciled or claiming land in Ontario desires to establish that he is the legitimate child of his parents, or that the marriage of his father or mother or of his grandfather and grandmother was a valid marriage, or that his own marriage was a valid marriage, or that he is the heir or one of the heirs of any person deceased, or that he is a natural born subject of His Majesty, he may, if the Court thinks fit, have any of such matters judicially investigated and declared. 10 Edw. VII. c. 59, s. 31.

32.—(1) The application shall be by petition supported Application. by an affidavit of the petitioner verifying the statements of How the petition must be supported. the petition, and stating that his claim is not disputed or questioned by any person; or, if his claim is to his knowledge disputed or questioned, the facts in relation to such dispute or question, and that he is not aware of any dispute or question except what he has set forth, and stating such other facts as may satisfy the Court of the propriety of proceeding with the investigation.

(2) The proceedings upon the petition shall be the same Investigation, proof, etc., in such case. as nearly as may be as in cases under section 2, and the certificate granted on the investigation shall be registered in the same way, and may be proved by the like evidence, as in the case of a certificate granted under section 13.

(3) The certificate when registered shall be conclusive Effect of certificate. and indefeasible in favour of the person to whom the same was granted and all persons claiming by, from, through or under him as regards His Majesty and all persons whomsoever and shall be *prima facie* evidence in favour of all other persons as against His Majesty and all persons whomsoever of the truth of the fact therein declared. 10 Edw. VII. c. 59, s. 32.

EFFECT OF FRAUD IN OBTAINING CERTIFICATE.

33. If in the course of any proceeding any person acting Certificate obtained by fraud. either as principal or agent knowingly and with intent to deceive makes or assists or joins in or is privy to the making of any material false statement or representation, or suppresses, withholds or conceals, or assists or joins in or is privy to the suppression, withholding, or concealing from the Court of any material document, fact or matter of information, any certificate or conveyance obtained by means of such fraud or falsehood, shall be null and void except as against a purchaser for valuable consideration without notice. 10 Edw. VII. c. 59, s. 33.

RE-INVESTIGATION.

34.—(1) After a certificate is granted or a conveyance is executed any person aggrieved thereby may, on petition, Re-investigation, petition for and after satisfactorily accounting for his delay, by leave of the Court or a Judge, have the title or claim re-investigated on such terms as may be deemed just.

(2) A certificate of the presentation of the petition shall Registration. be registered in the proper registry office.

(3) No proceeding on such petition shall affect the title But those who have purchased, etc., in the meantime not to be affected. of any person who, after the date of the certificate or conveyance under this Act and before the registration of the certificate of the presentation of the petition, has acquired

by sale, mortgage or contract, for valuable consideration, any estate or interest in the land described in the certificate or conveyance or, if the certificate was granted under section 31, in any land or other property, the title to which was derived from, through or under the person named in the certificate, in the character which is thereby declared to belong to him.

What order
may be made.

(4) The Court or Judge may make such order on the petition as he may deem just having regard to the provisions of the next preceding subsection and of section 33. 10 Edw. VII. c. 59, s. 34.

APPEALS.

Appeals.

35. An appeal shall lie from an order or decision of a Judge under this Act to a Divisional Court in the same manner and subject to the same restrictions as in the case of an appeal from a judgment or order of a Judge of the High Court Division in an action. 10 Edw. VII. c. 59, s. 35.

MISCELLANEOUS.

Register to be
kept.

36. A separate book shall be kept in the Supreme Court for the registration of certificates and conveyances under this Act, and the certificates and conveyances registered therein shall be numbered in order, and an index to the book shall be kept in such form as the Court may direct. 10 Edw. VII. c. 59, s. 36.

Where any
party is a
minor, lunatic,
etc.

37. Where any person who, if not under disability, might have made any application, given any consent, or done any act, or been party to any proceedings under this Act, is an infant, an idiot or a lunatic the guardian of the infant, or committee of the estate of the idiot or lunatic, may make such application, give such consent, do such act, and be party to such proceeding as such person might if free from disability, and shall otherwise represent such person for the purposes of this Act; and if the infant has no guardian, or the idiot or lunatic no committee of his estate, the Court or Judge may appoint a person with like power to act for the infant, idiot or lunatic. 10 Edw. VII. c. 59, s. 37.

Married
women.

38. A married woman shall, for the purposes of this Act, be deemed a *feme sole*. 10 Edw. VII. c. 59, s. 38.

No objection
to proceeding
to establish
title that peti-
tioner should
first have
brought an
action.

39. No objection to a petition shall be allowed upon the ground that the petitioner should first have brought an action, and if it appears upon the determination of the investigation that the petitioner is entitled to the possession of the land he may obtain an order against any other party to the proceeding for the delivery of possession thereof. 10 Edw. VII. c. 59, s. 39.

40. Proceedings shall not abate or be suspended by any death or transmission or change of interest, but in any such event the Court or a Judge may require notices to be given to persons becoming interested, or may make any order for discontinuing, or suspending, or carrying on the proceedings, or otherwise, in relation thereto as may seem just. 10 Edw. VII. c. 59, s. 40.

41. No petition, order, affidavit, certificate, registration or other proceeding shall be invalid by reason of any informality or technical irregularity therein, or of any mistake not affecting the substantial justice of the proceeding. 10 Edw. VII. c. 59, s. 41.

42.—(1) There shall be an Inspector of Titles who shall supervise the work of the Local Referees of Titles.

(2) Such officer of the Supreme Court as may be designated for that purpose by Rule of Court shall be the Inspector of Titles. 10 Edw. VII. c. 59, s. 42.

43. Every Local Master shall be Local Referee of Titles and the Inspector of Titles shall be the Referee of Titles where the proceedings under the petition are to be conducted at Toronto. 10 Edw. VII. c. 59, s. 43.

44. The Inspector of Titles, the Referee of Titles and every Local Referee of Titles in respect of the petition and the proceedings thereunder shall have the like powers as the Master in Chambers. 10 Edw. VII. c. 59, s. 44.

45. The Referee of Titles and every Local Referee of Titles shall have the same powers as a Judge of the Supreme Court within the limits prescribed by the Rules. 10 Edw. VII. c. 59, s. 45.

46. Subject to Rules of Court, unless where otherwise provided, the practice and procedure under *The Judicature Act* and Rules made thereunder shall apply to proceedings under this Act. 10 Edw. VII. c. 59, s. 46.

47.—(1) The Judges authorized under *The Judicature Act* may make Rules for referring petitions under this Act to any Referee of Titles or other officer of the Court, or to any counsel or other person and may regulate the fees to be paid on such references.

(2) The Judges may also make Rules for the purposes of and for regulating the practice or procedure under this Act notwithstanding that the practice or procedure prescribed by this Act may be thereby varied. 10 Edw. VII. c. 59, s. 47.

FORM 1.

PETITION TO QUIET A TITLE.

In the Supreme Court of Ontario.

In the matter of *(the East half of lot No. in the
Concession of the Township of or as the case may be,
briefly describing the property).*

To the Honourable the Judges of the Supreme Court of Ontario.

The Petition of of

SHREWETH,—

That your Petitioner is absolute owner in fee simple in possession
(*or as the case may be*) of the following land (*describing it*).

That there is no charge or other incumbrance affecting your Petitioner's title to the land, (except, *etc.*, or that your Petitioner's title is subject only to the charges or incumbrances in the schedule hereto mentioned, and that the only persons having or claiming any charge, incumbrance, estate right or interest in the land are set forth in the Schedule hereto annexed, and that the charge, incumbrance, estate, right or interest belonging to or claimed by each is therein set forth.) Your Petitioner therefore prays that his title to the land may be investigated and declared under *The Quieting Titles Act*.

A.B.,

or

C.D., Solicitor for A.B.

10 Edw. VII. c. 59, Form 1.

FORM 2.

ADVERSE CLAIM.

In the Supreme Court of Ontario.

In the matter of, *etc.*, (*as in petition*).

G.H., of, *etc.*, claims to be the owner of the land [*or as the case may be (stating briefly the nature and the grounds of the claim)*].

Dated this

day of

19 .

G.H.,

or

E.F., Solicitor for G.H.

10 Edw. VII. c. 59, Form 2.

FORM 3.

CERTIFICATE.

In the Supreme Court of Ontario.

These are to certify under the authority of *The Quieting Titles Act*, that *A.B.*, of , is the legal and beneficial owner in fee simple in possession (or as the case may be) of all, etc. (*here describe the land*) subject to the exceptions and qualifications mentioned in section 23 of the said Act (or as the case may be), and to (*specifying either by reference to a schedule or otherwise any of the charges or incumbrances, exceptions or qualifications to which the title of A.B. is subject*), but free from all other rights, interests, claims and demands whatever.

[Or that (*stating the facts found and declared under section 31, and stating on whose application the same are declared*)].

In witness whereof

one of the Justices of the Court has hereunto set his hand, and the seal of the Court has been hereunto affixed, this day of 19 .

G.S.H.,

J.A.B.

[*L.S.*]

Inspector (or Referee) of Titles.

10 Edw. VII. c. 59, Form 3; 2 Geo. V. c. 17, s. 27.

FORM 4.

CONVEYANCE BY THE SUPREME COURT.

The Supreme Court of Ontario, under the authority of *The Quieting Titles Act*, doth hereby grant unto *A.B.*, of [*here describe the land sold*] to hold the same unto the said in fee simple (or as the case may be), subject to [*here specify as in the case of a certificate of title*].

In witness whereof

one of the Justices of the Court has hereunto set his hand, and the seal of the Supreme Court has been hereunto affixed, this day of , 19 .

G.S.H.,

J.A.B.

[*L.S.*]

Registrar.

10 Edw. VII. c. 59, Form 4.

CHAPTER 124.

An Act respecting the Registration of Instruments
relating to Lands.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- Short title. **1.** This Act may be cited as *The Registry Act*. 10 Edw. VII. c. 60, s. 1.
- Interpretation. **2.** In this Act,
- “Certificate of amalgamation of loan corporations.” (a) “Certificates of Amalgamation of Loan Corporations” shall include a copy certified under the hand of the Registrar of Loan Corporations of the certificate of assent and declaration referred to in section 56 of *The Loan and Trust Corporations Act* and of any document mentioned in such certificate and a certificate issued for the purpose of registration under any Act of this Legislature authorizing or ratifying an agreement for the purchase and sale of the assets, or for the amalgamation of loan corporations.
- Rev. Stat. c. 184. (b) “County” shall include a city, a Provisional Judicial District, and any part of a county, district, or city set apart for judicial or registration purposes.
- “County.” (c) “Inspector” shall mean the Inspector of Registry Offices.
- “Inspector.” (d) “Instrument” shall include every Crown grant, and Order in Council of the Dominion and of Ontario, every deed, conveyance, mortgage, assignment of mortgage, certificate of discharge of mortgage, assurance, lease, bond, release, discharge, power of attorney, under which any such instrument is executed, every bond or agreement for the sale or purchase of land, will, probate of will, grant of administration, caution under *The Devolution of Estates Act* or renewal thereof, municipal by-law certificate of proceedings in any Court, judgment or order of foreclosure and every other certificate of judgment or order of any Court affecting any interest in or title to land, and certificate of amalgamation of loan corporations, every certificate of payment of taxes, granted under the corporate
- “Instrument.” Rev. Stat. c. 119.

seal of the county, city or town by the treasurer, every sheriff's and treasurer's deed of land sold by virtue of his office, every contract in writing, every order and proceeding in lunacy, bankruptcy and insolvency, every plan of a survey or subdivision of land, and every other instrument whereby land may be transferred, disposed of, charged, incumbered or affected in any wise, affecting land in Ontario.

- (e) "Land" shall include lands, tenements, hereditaments and appurtenances and any estate or interest therein. "Land."
- (f) "Power of Attorney" shall include a revocation or alteration thereof and an appointment of a substitute thereunder. "Power of Attorney."
- (g) "Will" shall include codicil, probate of will and exemplification, and notarial or prothonotarial copy of a will, or of a probate of a will; and letters of administration with the will annexed, and a devise whereby land is disposed of or affected. 10 Edw. VII. c. 60, s. 2. "Will."

3. Subject to the provisions of *The Land Titles Act*, after a certificate of the first registration of the owner under that Act has been registered as prescribed by that Act, this Act shall cease to apply to the land mentioned in the certificate. 10 Edw. VII. c. 60, s. 3. Application of Land Titles Act. Rev. Stat. c. 126.

4.—(1) No instrument affecting land in a Provisional Judicial District which has been granted by the Government of Ontario by Letters Patent or by order of the Lieutenant-Governor in Council since the 31st December, 1887, other than lands mentioned in subsection 2 of section 159 of *The Land Titles Act*, or which shall hereafter be so patented or granted, shall be registered under this Act. Lands in districts patented since 31st December, 1887. Rev. Stat. c. 126.

(2) The registration in the Registry Office of any such District of any lands so patented or granted before the passing of this Act is declared to be valid and effectual and instruments affecting such lands, patents for which have been already registered may continue to be registered under this Act. Saving as to lands heretofore registered

(3) A person claiming an interest in unpatented lands in any such District may as heretofore lodge with the local Master of Titles a caution under section 81 of *The Land Titles Act* subject to the provisions of that section. 3-4 Geo. V. c. 24, s. 2. Claim to unpatented lands. Rev. Stat. c. 126.

5.—(1) The registry divisions now existing, as set forth in Schedule "A," shall be continued. Registry Divisions.

New divisions. (2) Where a new county or district is formed the same shall constitute a registry division.

Situation of office. (3) Where a registry division includes the whole or part of the county or district town the registry office shall be situate therein, and in other cases shall be situate at such place as the Lieutenant-Governor in Council shall direct.

Idem. (4) Where a registry office is, in the opinion of the Lieutenant-Governor in Council, inconveniently or unsafely situated he may direct that a new registry office be erected on a new site to be approved by him. 10 Edw. VII. c. 60, s. 5.

Registration of instruments affecting lands in certain parts of London. **6.**—(1) Notwithstanding anything in this Act, until Proclamation by the Lieutenant-Governor in Council to the contrary, all instruments affecting lands within the City of London which were annexed to the City of London by the order of The Ontario Railway and Municipal Board made in the years 1912 and 1913 shall continue to be registered in the Registry Office for the North and East Ridings of the County of Middlesex, and all books and instruments relating to such lands shall remain in that office.

Exception. (2) Those portions of the Townships of London and Westminster, which were in the years 1912 and 1913 annexed to the City of London by orders of The Ontario Railway and Municipal Board, and which before the annexation thereof formed part of the Electoral District of East Middlesex shall, notwithstanding such annexation, continue to form part of the said Electoral District of East Middlesex. 3-4 Geo. V. c. 18, s. 26.

General register for City of Toronto. **7.** In the case of the City of Toronto the instruments mentioned in subsection 8 of section 23 shall be registered in the registry division of West Toronto. 10 Edw. VII. c. 60, s. 6.

County Councils to provide fire proof offices and vaults. **8.**—(1) For the safe-keeping and protection of all books, memorials, duplicates and other instruments of whatever description and plans belonging to the office of Registrar, the council of every county where at any time there are no safe and proper fire-proof offices and vaults provided by the council, or where hereafter any registry office is established, or where under the provisions of section 5 the Lieutenant-Governor in Council has directed a change of site, shall provide, furnish, maintain and keep in good repair a safe and fire-proof registry office, fire-proof vaulted, upon a plan and on a site to be approved by the Lieutenant-Governor in Council; and the council shall keep the registry office furnished with fuel and furniture and in good repair and properly heated, lighted, cleaned and ventilated.

Expense. (2) A town separated from a county for municipal purposes, and a city for which there is no separate registry office, shall bear such equitable proportion of the expense incurred under subsection 1 as the Inspector shall direct.

(3) Except where in this Act it is otherwise provided the Registrar to provide for vaults, etc., when directed by Inspector.
Inspector may in writing authorize the registrar under the direction of an architect named by the Inspector to expend out of the proportion of the fees to which the county or city may then or thereafter be entitled under sections 104 and 106 in providing adequate fire-proof or metal fittings for the vault of the registry office or for the proper heating and ventilation of the vault so much as may be deemed by the Inspector to be necessary, and the amount so expended, including the architect's charge, shall be certified by the Inspector, and his certificate or a duplicate thereof shall be transmitted by the registrar to the treasurer of the county or city, and shall be a discharge to the registrar of the amount so certified, as against the proportion of the fees then payable or to become thereafter payable by him.

(4) The Corporation of any county or city charged with the duty of providing books for use in a registry office may provide typewriting machines for use in copying instruments in the registry books. 10 Edw. VII. c. 60, s. 7. Municipality may provide typewriting machines.

REGISTRARS.

9. There shall be a registrar for every registry division who shall be appointed by the Lieutenant-Governor in Council and shall hold office during pleasure. 10 Edw. VII. c. 60, s. 8. Registrars, how appointed, etc.

10. Every registrar shall have a seal of office to be approved of by the Inspector. 10 Edw. VII. c. 60, s. 9. Registrar's seal.

11.—(1) The Lieutenant-Governor in Council may fix and determine the amount of the security to be furnished by each registrar. Security.

(2) The amount of such security shall, except in the case of a registrar in a Provisional judicial district, be not less than \$4,000 nor more than \$10,000. 10 Edw. VII. c. 60, s. 10. Amount of.

(3) The Lieutenant-Governor in Council, upon the application of any county or city interested, or without such application, may require any registrar to furnish additional security in such form and for such an amount as the Lieutenant-Governor in Council determines to be sufficient to secure the due payment of any money payable by the registrar to the county or city. 10 Edw. VII. c. 60, s. 11. Additional security may be directed.

12. The registrar and his sureties shall be jointly and severally liable upon and to the extent of the security furnished to any aggrieved person to indemnify him against any damage or loss sustained by him, by or through the neglect or misconduct of the registrar or his deputy in the performance of the duties of his office, but this provision shall not Liability of registrars and their sureties.

exempt the registrar from any further responsibility to a person sustaining such damage or loss. 10 Edw. VII c. 60, s. 12.

Registrar's
oath of office.

13. Every registrar, before he enters upon the duties of his office, shall take and subscribe the oath, Form 1, which shall be transmitted by him to the Provincial Secretary. 10 Edw. VII. c. 60, s. 13.

Appointment
of deputies.

14.—(1) The registrar may by writing under his hand and seal of office appoint a deputy or deputies who may perform all the duties required under this Act in the same manner and to the like effect as if done by the registrar.

Power of
deputy in case
of death or
removal of
registrar.

(2) In case of the death, resignation, removal from or forfeiture of office of the registrar, the deputy registrar, or if more than one, the senior deputy registrar, shall do and perform all and every act, matter, and thing necessary for the due execution of the office, until a new appointment of registrar is made, and if there is no deputy registrar the Crown Attorney shall be the registrar *pro tempore* until another person is appointed, and the Crown Attorney on becoming registrar may appoint a deputy registrar.

Temporary
officer to be
responsible.

(3) The registrar *pro tempore* shall be answerable for the execution of the office during such interval, and any security given by the registrar shall be and stand as security for the due and faithful performance of the duties of his office by the registrar *pro tempore*. 10 Edw. VII. c. 60, s. 14.

Deputy's oath
of office.

15. Every deputy registrar, before he enters on the duties of his office, shall take and subscribe the oath appointed to be taken by the registrar, or an oath to the like effect, which oath he shall forthwith transmit to the Provincial Secretary. 10 Edw. VII. c. 60, s. 15.

Registrars or
deputies, etc.,
not to act as
agents for
persons tak-
ing securities
on real estate,
or in selling
land, or
advise as to
titles, etc., in
their Counties.

16.—(1) No registrar or deputy registrar or clerk in his office shall, directly or indirectly, act as the agent of any corporation, or person investing money and taking security on land within his county, nor advise, for fee or other reward, or otherwise, upon titles to land, or practise as a conveyancer, or act as an agent for the sale of land, within his county, nor, subject to the provisions of subsection 4, shall he carry on or transact within the registry office any other business or occupation whatever.

Idem.

(2) No registrar, deputy registrar or clerk in a registry office shall take any proceeding under a power of sale in a mortgage or other instrument affecting land, nor shall he personally, or as a member of a firm, carry on a loaning business or be in any way connected with a firm which transacts any business with the office of the registrar.

(3) No registrar, deputy registrar or clerk in a registry office shall practise as a barrister, solicitor, physician or surgeon. Restriction on practising a profession.

(4) Subsection 3 shall not apply to registrars appointed before the 27th day of May, 1893, but a registrar appointed before that date whose annual net income from his office exceeds \$1,000 shall not carry on practice as a physician or surgeon during office hours other than a consulting practice, or out of office hours other than a consulting or office practice at his home. 10 Edw. VII. c. 60, s. 16. Saving.

DUTIES OF REGISTRARS.

17. The registrar shall reside within ten miles of his office, and the work of the office shall be conducted and carried on under the direction and immediate supervision of the registrar. 10 Edw. VII. c. 60, s. 17. Work in registry office to be personally supervised by registrar.

18.—(1) Except as hereinafter in this section provided the registrar or his deputy shall attend at his office from the hour of ten o'clock in the forenoon until four o'clock in the afternoon, every day in the year, holidays excepted, and no instrument shall be registered on any holiday, nor shall any instrument be received for registration except within the hours above named. 10 Edw. VII. c. 60, s. 18 (1). Hours of attendance at office.

(2) The registrars for the East Division of the City of Toronto, the West Division of the City of Toronto, the Registry Division of East and West York, the County of Wentworth, the County of Carleton, the City of Ottawa, and the City of London, the County of Waterloo, the County of Leeds, the County of Frontenac and the City of Kingston and in the Provisional Judicial Districts, or their respective deputies, shall attend at their offices on Saturdays, from the hour of ten o'clock in the forenoon until one o'clock in the afternoon and no longer, and no instrument shall be received for registration on that day except within those hours. 10 Edw. VII. c. 60, s. 18 (2); 2 Geo. V. c. 23, s. 1; 3-4 Geo. V. c. 24, s. 3. Of registrars for certain divisions.

(3) From the 1st day of July to the 31st day of August, both days inclusive, none of the other registrars shall, after one o'clock in the afternoon on Saturdays, register any instrument, nor shall any instrument be received for registration, nor shall it be obligatory to attend at his office after that hour. 10 Edw. VII. c. 60, s. 18 (3). Office hours of other registrars on Saturday during long vacation.

19.—(1) The registrar shall, when required, and upon being tendered his proper fees, make searches and furnish abstracts of or concerning all instruments or memorials registered which mention any lot of land as described in the patent thereof from the Crown, or any lot described by number or Registrars to make searches and abstracts.

To exhibit
originals of
instruments,
etc.

To certify
extracts, etc.

Certificate of
registrar on
abstracts.

letter on any registered plan, subsequent to the registration of the plan, or any part of a lot where the same is clearly described and can be identified in connection with the chain of title, or has been ascertained by actual survey and of and concerning all instruments registered, as may be requested of him in writing, if a writing is demanded by him; and he shall exhibit any original registered instrument, and also the books of the office relating thereto when a personal inspection thereof is desired, and shall give extracts certified under his hand of and concerning the parties to any of such instruments, or of the witnesses to the same, or any other particulars which may be required, but no registrar shall allow any such book or instrument to be taken out of his possession or custody.

(2) Every abstract furnished by a registrar shall be commenced and certified to in the words following:

Registry Office, County of	Abstract of title
I certify that the above (or the following) are correct extracts from the only instruments registered in this office which mention or refer to (<i>describe property sufficiently for identification</i>). This abstract does not purport to give entries from the General Register.	
Dated at	this
the hour of	day of 19 , at
Registrar, or Deputy-Registrar. (L.S.)	

Fees to be
stated on
abstract.

(3) The fees for every abstract shall be stated on the face thereof and shall show the items making up the amount of such fees.

If requested
discharged
mortgages
and expired
liens to be
omitted from
abstract.

(4) The registrar, when requested in writing to do so by the person requiring an abstract of title, shall omit from it mortgages and assignments thereof in respect of which instruments purporting to be discharges are entered in the abstract index and mechanics' liens, in respect of which an action has not been brought, and a certificate thereof registered as required by *The Mechanics and Wage Earners Lien Act*, or any other class of instrument mentioned in the request, and in such case the certificate of the registrar shall be varied accordingly. 10 Edw. VII. c. 60, s. 19.

Rev. Stat.
c. 140.

Persons
searching not
to use ink for
copying.

20. A registrar shall not permit any person other than his officers or employees to use ink or other indelible fluid or substance for the purpose of making copies of or extracts from an instrument, document, book, paper or record in the Registry Office, or of any matter therein contained. 10 Edw. VII. c. 60, s. 20.

Non-liability
for certain
errors or
omissions

21. A registrar shall not be liable in respect of entries of instruments or errors or mistakes in the entries of instruments or omissions by any of his predecessors in office, nor for any defect or inaccuracy in any abstract or certificate arising from such error, mistake or omission, unless he had

become aware or had knowledge of such error, mistake or omission, or unless such abstract or certificate shall be defective or inaccurate to the knowledge of the registrar or his deputy or the clerk by whom it is made or signed. 10 Edw. VII. c. 60, s. 21.

22.—(1) On request of any person the registrar shall furnish a certified copy, under his hand and seal of office, of any instrument or memorial deposited, registered, or filed and kept in his office. Registrar to furnish certified copies.

(2) No registrar or deputy registrar shall be required to produce any instrument or document in his custody as registrar or deputy registrar, unless ordered by a Judge of one of the Courts of Ontario, which order shall be produced to the officer issuing the subpœna requiring such production, and shall be by him noted in the margin of the subpœna. 10 Edw. VII. c. 60, s. 22. Not bound to produce any papers, except on order of a Judge.

BOOKS OF OFFICE.

23.—(1) The treasurer of every county and the treasurer of every city for which there is a separate registry office shall provide a fit and proper registry book for each township, city, town, and village, and for each town plot laid out by the Crown, and all index and other books required for the business of the registry office. Treasurer to provide proper books.

(2) All registry books shall be as nearly as may be of the like size and description as those heretofore furnished, and shall continue to be of one uniform size as nearly as practicable. Pattern.

(3) From the time the books are so provided and received at the registry office the registrar shall keep and cause to be used for that purpose a separate registry book for and of each township, city, town and village and for each town plot laid out by the Crown within his registry division. Separate for each local municipality.

(4) Except in the case of the Registrar of East Toronto the registrar shall also keep a general registry book, herein called the general register for the whole of the Registry Division, which shall be used for the purposes hereinafter set forth, and in which book an alphabetical index of the names of all the parties mentioned by name in every instrument entered therein shall also be kept. 10 Edw. VII. c. 60, s. 23 (1-4). General registry book.

(5) Except in the case of the Registrar of West Toronto the registrar shall also keep a by-law book in which shall be entered the registration number of every money by-law, the number of the by-law and its title, and name of the municipality, the amount of the debt, the rate of interest and the period for which the debentures are to run, and where the By-law book to be kept to record money by-laws.

rates are to be levied on part only of the rateable property in the municipality, that fact shall be stated.

No entry in
General Regis-
ter necessary.

(6) No entry in respect of the by-law shall be made in the General Register. 3-4 Geo. V. c. 24, s. 4, *part*.

Index of wills
omitted from
general reg-
istry book.

(7) Where, before the 7th day of April, 1896, wills had been recorded in the separate books of a registry division but not in the general register when the same ought to have been recorded therein, the Inspector may, by order in writing, direct that an alphabetical index shall be prepared and kept of the names of all persons mentioned by name in such wills and designating the book or books and the pages thereof in which such wills are recorded, and the treasurer shall, for such index and the preparation thereof, pay to the registrar such sum as the Inspector may order in writing.

General regis-
try book, what
to be used for.

(8) The general register shall be used for recording wills, probates, grants of administration, and powers of attorney in which there is a general devise or power affecting land without local description, and claims for lien under *The Mechanics and Wage Earners Lien Act* against land which constitutes the line of railway or right of way of a railway company, and also certificates of amalgamation of loan corporations.

Rev. Stat.
c. 140.

(9) When a registrar requires a new registry book, or any other book for the use of his office, the same shall, on his application therefor in writing, be furnished to him by the treasurer, and all books so furnished shall be paid for by the treasurer.

New books.

Property.

(10) All books so furnished, used and kept shall be the property of His Majesty.

Extra books.

(11) The Inspector, when for the despatch of business he finds it necessary, may, by order in writing, permit more than one registry book to be in use at the same time for the same municipality. 10 Edw. VII. c. 60, s. 23 (5-9).

If the treasurer
neglects to pro-
vide books.

24. If the treasurer refuses or neglects to furnish any such book within thirty days after application therefor the registrar may provide the same and recover the cost thereof from the municipal corporation of the county or city in default. 10 Edw. VII. c. 60, s. 24.

Registrar to
certify books.

25. The registrar shall certify, Form 2, respecting each register or other book so furnished or provided. 10 Edw. VII. c. 60, s. 25.

Provision
where territory
attached to or
new registry
division
formed.

26.—(1) Where in consequence of a change in the boundaries of a municipality or from any other cause territory forming part of a registry division becomes part of another registry division, or where a new registry division is established consisting wholly or in part of territory which thereto-

fore formed part of an existing registry division, the Registrar of the registry division from which such territory is detached shall deliver to the Registrar of the registry division of which it becomes part or in which it is comprised:

- (a) The registry books and all other books and indexes which have been kept according to law exclusively for such territory or any part of it; Certain books, instruments and plans to be transferred.
- (b) The original memorials of all instruments and documents relating exclusively to land within such territory;
- (c) All maps of municipalities within such territory deposited according to law in his office, and all registered plans relating exclusively to land within such territory;
- (d) An abstract index book of all instruments relating to land within such territory registered before separate registry books were kept for each township or place;
- (e) A proper registry book containing full and complete copies of all memorials and other registered instruments affecting such land which are not under the provisions of clause (b) required to be delivered, or which, though relating exclusively to land within such territory, are entered in a registry book not required to be delivered as provided by clause (a);
- (f) Another proper registry book containing copies of all wills and other instruments registered in a general register in which the names of any of the parties to them have been entered in the alphabetical index kept for any part of the territory;
- (g) A copy of the alphabetical index attached to any such general register.

(2) The copies mentioned in clause (e) of the next preceding subsection shall be entered in the registry book in the same order in which they are entered in the original registry book, and the registrar shall write on the margin of such first mentioned book opposite to the entry of each memorial or instrument the number of it and the time at which the same was registered as appears by the indorsement thereon. Copies to be entered according to original order.

(3) Each registry book to be delivered shall have or be accompanied by an alphabetical index of names. Books to be indexed.

(4) The registrar shall carefully compare all entries made in the registry books which he is required to deliver with the original entries in the registry books in his office, and shall write and sign a certificate that he has done so in each book before delivering it. Comparing and certifying books.

Entering instruments not copied.

(5) The registrar who receives any original memorial or instrument under the provisions of this section which is not copied in any registry book delivered to him shall cause the same to be copied in a proper registry book.

Penalty for neglect to deliver books, etc.

(6) A registrar who fails to perform the duties imposed on him by the preceding subsections of this section within six months after the territory is detached from his registry division, or within any extended period allowed by the Inspector under the provisions of subsection 7, shall incur a penalty not exceeding \$400.

Extension.

(7) The Inspector may extend such period of six months for a further period not exceeding six months. 10 Edw. VII. c. 60, s. 26.

Registrar removed or resigning to deliver up books to new registrar, etc.

27. Where a registrar is removed from or resigns his office he shall forthwith deliver up all books, plans, instruments, memorials and indexes in his possession as registrar to the person who is appointed registrar in his stead, or to any other person who may be appointed in writing, by the Attorney-General of Ontario to receive the same, and if the registrar refuses to do so the Attorney-General may direct the sheriff of the county to seize and take immediate possession of the same wheresoever found, and the registrar so offending shall incur a penalty not exceeding \$2,000, and, in the discretion of the Court, may also be imprisoned for any period not exceeding one year. 10 Edw. VII. c. 60, s. 27.

Penalty in case of refusal.

When any book becomes unfit for further use copy to be made.

28.—(1) Where any book, from age or use, is becoming obliterated or unfit for future use the Inspector shall, by direction in writing under his hand, order that it be re-copied in a book of the same description as that prescribed by section 23, so far as the same can be deciphered by examination thereof and of the original instruments or memorials relating thereto.

Original to be preserved.

(2) Such book, having the order of the Inspector inserted at the beginning, and having the affidavit or declaration of the registrar or his deputy at the end, to the effect that it is a true copy of the original book, shall be accepted and received as the original, and as *prima facie* evidence that the copy is a true copy, but the original book shall nevertheless be carefully preserved.

Repair of books, maps, etc.

(3) The Inspector may order any book which is out of repair to be repaired in such manner as he thinks necessary, and may order plans and maps deposited in any registry office to be copied, mounted or bound, and to be preserved in such manner as he thinks necessary.

Inspector may order duplicate or new abstract indexes.

(4) The Inspector may order as many counterparts or copies of any abstract index book to be made as he shall deem necessary for the public convenience, and may order new

abstract indexes to be made when the indexes in use have become complicated or otherwise inconvenient.

(5) When authorized so to do by the Lieutenant-Governor in Council the Inspector may order new surveys and plans to be made of any locality or territory in a registry division which, in his judgment, have become necessary, whether such locality or territory has or has not been subdivided according to a registered plan. 10 Edw. VII. c. 60, s. 28. And new surveys and plans.

29. Subject to the provisions of section 30 the fees and expenses for services rendered under sections 26 and 28 shall be paid by the treasurer of the county; and a town separated from the county for municipal purposes, and a city for which there is not a separate registry office shall pay to the county such equitable proportion thereof as the Inspector shall direct. 10 Edw. VII. c. 60, s. 29. Payment for services under ss. 26 and 28.

30. The Inspector may order the expenses of new surveys and plans, and the registration thereof under the provisions of section 28, to be paid by the treasurer of any local municipality concerned, or in part by the county treasurer and in part by the treasurer of the local municipality, and the local municipality may, subject to the order of the Inspector, cause such expenses or part thereof to be levied by assessment on all rateable property comprised in the portion of the municipality affected by such plan or survey. 10 Edw. VII. c. 60, s. 30. Fees for preparing plans, etc., for municipalities.

31.—(1) The registrar, in a book, Form 3, called the "Abstract Index," shall enter under a separate and distinct head each separate lot or part of a lot of land as originally patented by the Crown, or as defined on any registered plan of the subdivision of such land into smaller sections or lots. Abstract index of lots.

(2) Every instrument which mentions such parcel or lot of land or other subdivision, the names of every party to such instrument and the nature of it, the registration number for each municipality in which land mentioned therein is situate, and the day, month and year of its registration, the consideration or mortgage money mentioned in it, and such a description of the land therein mentioned as will readily identify its location, shall, in addition to all entries by law required, be entered by the registrar in the abstract index in regular order under the proper heading of each separate parcel or lot of land. 10 Edw. VII. c. 60, s. 31. Entries.

32. Every registrar shall also keep, for each township, city, town, and village, and for each town plot laid out by the Crown an alphabetical index of names, Form 4, exhibiting in columns the number of each instrument, the names of the grantors, and the names of the grantees. 10 Edw. VII. c. 60, s. 32. Alphabetical index of names for each locality.

INSTRUMENTS THAT MAY BE REGISTERED.

Instruments
which may be
registered.

33. Except as herein otherwise provided, and subject to the provisions of the next following section, all instruments mentioned in section 2 may be registered. 10 Edw. VII. c. 60, s. 33.

Instruments
affecting lands
without local
description.

34.—(1) Except as provided by subsection 8 of section 23 no instrument which affects land without local description shall be registered unless the instrument, when offered for registration in addition to the ordinary proofs for registration, has attached to it a statutory declaration by one of the parties to the instrument, or by his attorney under registered power of attorney, or by the heirs, executors or administrators of such party, to the effect that the instrument affects land within the registry division, and giving a local or general description of such land sufficient to enable the same to be traced or ascertained by a surveyor, and thereupon such instrument shall be recorded in the proper separate registry book and particulars thereof entered in the abstract index and in all other books in the same manner as if the instrument itself had contained the local description of the land.

Registration
of instruments
in general
register and
separate regis-
try books.

(2) Where an instrument affecting land without local description is, under this section, recorded in the separate registry books it may be further recorded and entered therein so as to affect other land by local description, by the registration of a statutory declaration, Form 15, to be made by any of the persons in this section mentioned.

Registry of
statutory de-
claration as to
lands affected.

(3) Where an instrument has been or is recorded in the general register particulars thereof may be recorded in the separate registry books by the registration of a like statutory declaration.

Manner of
recording.

(4) Such last-mentioned statutory declaration shall be recorded in the proper registry books, and particulars thereof entered in the abstract index and in all other books in the same manner as upon the registration of an instrument which affects land by local description.

Who may
make declara-
tion for a
corporation.

(5) Any statutory declaration in this section mentioned may, where one of the parties to an instrument is a corporation, be made by an officer thereof, or where one of the parties entitled to make a declaration is absent from Ontario it may be made by his solicitor.

Meaning of
"local de-
scription."

(6) In this section "local description" shall mean a local or general description of land sufficient to enable the same to be traced or ascertained by a surveyor.

What may be
registered
before patent.

(7) Except mortgages, incumbrances or liens, made or given by the original nominee of the Crown or any person through whom a person obtaining letters patent for land

derived title, no instrument affecting unpatented land shall be registered. 10 Edw. VII. c. 60, s. 34.

35.—(1) An instrument other than a will, grant from the Crown, Order in Council, by-law or other instrument under the seal of any corporation, certificate of judicial proceedings or an instrument which may be registered by deposit of a certified copy shall not be registered unless accompanied by an affidavit, Form 5, of a subscribing witness, not being a party to the instrument, as to the execution of the instrument by each party who appears to have executed the same, setting forth the name, place of residence, addition, occupation or calling of the witness, and deposing to—

- (a) The execution of the original and of the duplicate, if any, by the party to whose execution thereof he is a witness;
- (b) The place of execution by such party;
- (c) That he knows that the person who executed the instrument in his presence is the party to the instrument as to whose execution thereof he deposes;
- (d) That he is a subscribing witness to the instrument.

(2) The affidavit shall be made on or securely attached to the instrument.

(3) An instrument may be registered notwithstanding that the Christian name or names of the subscribing witness making the affidavit is or are only set forth therein by initials or abbreviation and not in full.

(4) The proof of the execution of an instrument made before the first day of September, 1910, which was sufficient proof for registration before that day, shall be sufficient proof for registration under the provisions of this Act. 10 Edw. VII. c. 60, s. 35.

36. An instrument, not purporting to convey the land therein mentioned, but which in its nature is, or purports to be, given as a security for the payment of a debt or liability incurred by the person executing the same in respect of a purchase or delivery of any goods or in respect of an advance or loan of money, shall not be registered unless the affidavit of execution, Form 6, states that the instrument was read over and explained to the person executing the same, and that he appeared perfectly to understand the same, and was informed that it might be registered as an incumbrance on his land. 10 Edw. VII. c. 60, s. 36.

37.—(1) Every affidavit made under the authority of this Act shall be made before the registrar or deputy registrar of

Proof for registration.

Name of witness need not be set forth in full in affidavit.

Saving.

Affidavit of execution in case of instruments given in respect of a purchase or delivery of goods.

Before whom to be sworn in Ontario.

the registry division in which the land lies, or before some person authorized by law to take affidavits in or for use in Ontario.

(2) Where an affidavit of execution is made out of Ontario before a person who has not an official seal it shall be sufficient for him so to certify. 10 Edw. VII. c. 60, s. 37.

[See *The Interpretation Act, Rev. Stat. c. 1, s. 23, and The Evidence Act, Rev. Stat. c. 76, s. 38.*]

Affirmation or declaration in certain cases.

38. The proof may be by affirmation or declaration when the person before whom the same is made certifies that, by the law of the country where the proof is made, an affirmation or declaration may be substituted for an affidavit. 10 Edw. VII. c. 60, s. 38.

Parties not to take affidavits.

39. No person authorized to take affidavits shall take an affidavit of the execution of an instrument to which he is a party; nor shall such an affidavit be taken from a witness unless the witness has subscribed his name in his own handwriting as such witness. 10 Edw. VII. c. 60, s. 39.

Witnesses to sign.

Witnesses compellable to make affidavit.

40. Every subscribing witness shall be compellable, by order of a Judge of the Supreme Court or of a County or District Court, to make affidavit or proof of the execution of an instrument for the purpose of registration, and to do all other acts necessary for that purpose, upon being paid or tendered his reasonable expenses therefor. 10 Edw. VII. c. 60, s. 40.

Witnesses insane, absent, etc.

41. Where the witnesses to an instrument are dead or are out of Ontario, or have become insane, idiotic, imbecile, or of unsound mind or understanding, and whether so found by inquisition or not, or where an instrument, not by law requiring an attesting or subscribing witness thereto, has been executed without an attesting or subscribing witness, or if it is proved that the place of abode or residence of such first mentioned witnesses is unknown, any person who is or claims to be interested in the registration of the instrument may make proof before any Judge of any County or District Court, of the execution of the instrument, and upon a certificate, Form 7, being endorsed on the instrument and signed by the Judge, the registrar shall register the instrument and certificate. 10 Edw. VII. c. 60, s. 41.

Seal of Court or seal of Corporation with signature of officer to suffice for registration.

42. The seal of a Court of Record affixed to an instrument of itself, and the seal of a corporation affixed to an instrument with the signature of the secretary, manager, or attorney or presiding officer thereof, shall be sufficient evidence for the purpose of registration, of the due execution of the instrument by the Judge, or the officer of the Court signing the same, or by the corporation. 10 Edw. VII. c. 60, s. 42.

43. Every judgment or order affecting land may be registered in the registry office of the registry division in which the land is situate on a certificate signed by the proper officer of the Court setting forth the substance and effect of the judgment or order and the land affected thereby. 10 Edw. VII. c. 60, s. 43.

[As to registering and vacating certificates of *lis pendens*, see *The Judicature Act, Rev. Stat. c. 56, ss. 36, 37.*]

44.—(1) Where an instrument is registered the registrar shall deliver a certified copy or copies thereof as may be required of him, and of all the documents connected with or relating to the same, under his signature and seal of office, and in his certificate he shall state the time, place and other particulars of registration, and that the copy which he so delivers is a true copy of the instrument, and of all the other documents connected with or relating to the same of which they respectively purport to be copies, and in the case of a will that the affidavit proving the due execution of it is deposited in his office.

(2) Every such certified copy may be registered in any other registry office, by deposit thereof, without production of the original instrument and without proof other than the production of the copy so certified.

(3) Where an instrument is deposited in an office of Land Titles, or is registered in the office of the Clerk of a County or District Court, a copy thereof certified by the officer in whose office it is deposited or registered may be registered in any registry office in the same manner as a copy of an instrument certified by a registrar. 10 Edw. VII. c. 60, s. 44 (1-3).

(4) A power of attorney or other instrument conferring authority upon an officer or person to act for an incorporated company, executed by the company and deposited in the office of any department of the Government, may be registered by the deposit of a copy thereof certified by the proper officer of that Department and without production of the instrument or proof of the execution thereof. 10 Edw. VII. c. 60, s. 44 (4); 3-4 Geo. V. c. 24, s. 5.

[As to evidence by certified copy, see *The Evidence Act, Rev. Stat. c. 76, ss. 46 and 47.*]

45. A notarial copy of an instrument executed in the Province of Quebec, the original of which is filed in a notarial office according to the law of Quebec, and a prothonotarial copy of an instrument executed in Quebec may be registered and shall be treated under this Act for all purposes as if it were the original instrument, and such notarial or prothonotarial copy with the seal of the Notary or Prothonotary attached shall be registered without any other proof of the execution of the original thereof. 10 Edw. VII. c. 60, s. 45.

INSTRUMENT IN FOREIGN LANGUAGE.

Registering
instruments
in foreign
languages.

46. Where an instrument or an affidavit of execution is written wholly or in part in a language other than English there shall be produced with the instrument or the affidavit of execution a translation into English, together with an affidavit by the translator stating that he understands both languages and has carefully compared the translation with the original, and that the same is in all respects a true and correct translation, and the registrar shall not enter the instrument or affidavit in the language in which it is written but shall copy from the translation. 10 Edw. VII. c. 60, s. 46.

MANNER OF REGISTERING.

Generally.

Instruments
to be re-
gistered in
full unless
otherwise pro-
vided.

47.—(1) Unless otherwise provided, every instrument which may be registered under this Act shall be registered upon and by delivery to and deposit with the registrar of the instrument or of a duplicate or other original part thereof with all necessary affidavits, and, unless otherwise provided, every such instrument shall be recorded at full length in the proper book, including every certificate and affidavit accompanying it, except registrar's certificates.

Fees payable
before regis-
tration.

(2) The registrar shall not be bound to receive for registration or to register an instrument unless the proper fees are first paid. 10 Edw. VII. c. 60, s. 47.

Mortgages
not registered
in full.

48.—(1) When a mortgage has endorsed upon it the words "not to be recorded in full," the mortgage shall not be copied into the registry book.

Method.

(2) The mortgage shall be numbered as other instruments are required to be numbered in the registry book in its proper order, and the marginal note made as required by section 53, and the registrar shall at the time of the registration enter opposite the number in the registry book the words "Mortgage not recorded in full," and shall also give the date and names of the parties to the mortgage.

Fee on
registration.

(3) The fee payable for registration, not including more than four distinct parcels of land having a separate heading in the abstract index, shall be \$1, and for each additional parcel requiring entry to be made under a separate heading in the abstract index, five cents.

Fee on regis-
tration of
mortgage not
registered in
full.

(4) Where the mortgage embraces two or more parcels of land situate in different municipalities in the same registry division there shall be paid a further fee of twenty-five cents for each municipality after the first.

(5) After the registration of the mortgage the registrar, upon the application of any person claiming to be interested in the mortgaged land, and upon payment of the prescribed fees, less the amount already paid for registration, shall cause such mortgage to be recorded in full in the registry book.

Subsequent
registry in
full.

(6) The registrar shall indicate in the abstract index, in the case of the registration of a mortgage endorsed "Not to be recorded in full," that the same has not been recorded in full, and where it has afterwards been recorded in full, under the provisions of subsection 5, the registrar shall note in the abstract index opposite the entry, "Subsequently recorded in full," giving the date of recording and the number and page of the registry book.

Entry in ab-
stract index
where mort-
gage not reg-
istered in
full.

(7) In this section the word "mortgagee" shall include the assignee of a mortgage and a person obtaining any security coming within the terms of section 36, and the word "mortgage" shall include an assignment of a mortgage and an agreement to extend the time for payment of a mortgage or any such security. 10 Edw. VII. c. 30, s. 48.

"Mortgagee"
and
"mortgage."

49.—(1) No instrument purporting to be signed or executed by any person by attorney shall be registered unless, at or before the time of registration, the original power of attorney, or a copy thereof certified for registration, is registered in the same registry office, but when such power of attorney or a certified copy thereof cannot be produced proof may be made before a judge of any County or District Court of the execution of the instrument, and upon a certificate, Form 7, being endorsed on the instrument and signed by the judge that he is satisfied by the proof adduced of the due execution of the instrument the registrar shall register the instrument and certificate.

Registration
of power of
attorney when
instrument
executed by
attorney.

(2) Where an instrument, signed or executed by any person by attorney, is registered the registrar shall enter a note of the fact of such signature or execution by attorney, giving the name of the attorney, on the abstract index and on all abstracts of title thereafter furnished by him relating to the land affected by the instrument.

Special entry
to be made
when instru-
ment executed
by attorney.

(3) Subsection 1 shall not apply to instruments purporting to be executed by attorneys or commissioners for the Canada Company, the Trust and Loan Company of Canada, the Scottish Ontario and Manitoba Land Company, the North British Canadian Investment Company, the North of Scotland Canadian Mortgage Company, Limited, or the Scottish American Investment Company. 10 Edw. VII. c. 60, s. 49.

Exception

50. Where an instrument in two or more original parts is registered the registrar shall endorse upon each of such parts a certificate of the registration, Form 8, and any part so cer-

Instrument in
two or more
parts.

tified shall be received as *prima facie* evidence of the registration of the instrument and of the due execution of the same. 10 Edw. VII. c. 60, s. 50.

Instruments relating to several lots in different localities.

51. Where an instrument includes parcels of land situate in different municipalities in the same registry division it shall only be necessary to furnish the instrument or one original part of the instrument, with an affidavit of its execution, and the instrument and affidavit shall be copied into the registry book for each municipality or place wherein any of the land therein mentioned is situate, and the registrar shall make the necessary entries and certificates. 10 Edw. VII. c. 60, s. 51.

Copying into registry book.

Filing instrument and affidavit.

Certificate and its effect.

52.—(1) When an instrument is registered the registrar shall make an entry thereof in the abstract and alphabetical index books, and record the instrument in the registry book in the order in which it is received, and file the same with the affidavit of execution and any other affidavit or certificate accompanying it, and shall endorse on every such instrument and upon every duplicate or other original part of it a certificate, Form 8, and shall therein mention the year, month, day, hour and minute in which the instrument was registered, stating in what book the same has been recorded, and the registration number, and shall sign the certificate, which shall be allowed and taken in all courts as evidence of the respective registries.

Registrar to see that all copies in registers are correct.

(2) The registrar shall see that all copies of instruments in the registry books are true copies, and he or his deputy or clerk shall certify all such copies by writing "examined and certified true copy" in the margin opposite every copy in the book, appending his initials and the date.

Statutory declaration of correctness.

(3) When a registry book is completed the registrar, his deputy or clerk, shall at the end thereof show by a statutory declaration that the copies contained in such book and certified by him are true copies of the original instruments of which they purport to be copies. 10 Edw. VII. c. 60, s. 52.

Pages and instruments to be numbered.

53. Every page of the registry book and every instrument recorded therein shall be numbered and the year, month, day, hour and minute of registration shall be entered in the margin of the registry book, Form 9, and the entry shall be signed by the registrar or his deputy. 10 Edw. VII. c. 60, s. 53.

Minute of registration in margin.

Crown Grants.

Crown grants.

54. Grants from the Crown shall be registered by producing the grant or an exemplification thereof, with a true copy thereof with an affidavit verifying such copy, and the copy shall be deposited with the registrar, and the correctness of it shall be verified by the registrar or his deputy. 10 Edw. VII. c. 60, s. 54.

Orders in Council.

55. Orders in Council shall be registered by depositing a copy of the Order certified by the Clerk of the Council. Orders in Council.
10. Edw. VII. c. 60, s. 55.

Wills.

56.—(1) A will shall be registered,

Registration
of wills.

(a) By the production of the original will and the deposit of a true copy thereof with an affidavit verifying such copy, and with an affidavit sworn to by one of the subscribing witnesses to the will proving the due execution thereof by the testator; or,

(b) By the production of probate or letters of administration with the will annexed, or an exemplification or certified copy thereof, under the seal of any court in Ontario, or in Great Britain and Ireland, or in any British province, colony, or possession, or in any foreign country having jurisdiction therein, and by depositing a true copy of the probate, letters of administration, or exemplification or certified copy with an affidavit verifying such copy.

(2) The correctness of the sworn copy shall be verified by the registrar or his deputy. Verification.

(3) Where a will is registered by the production of the original will the affidavit of the subscribing witness or of some other person shall state that the testator is dead. Proof of testator's death.

(4) Unless with the consent in writing of the Treasurer of Ontario an original will or an exemplification or certified copy of probate or letters of administration with the will annexed under the seal of any court in Great Britain and Ireland, or in any British province, colony or possession, or in any foreign country having jurisdiction therein, shall not be registered under this section unless accompanied by a certificate of the Registrar of the Surrogate Court of the county in Ontario where the deceased had a fixed place of abode, or where the lands, or any of them, devolving by the will are situate, showing that a statement has been filed with him similar to that required by section 11 of *The Succession Duty Act*, and such certificate shall be deposited with the registrar. Compliance with requirements of Succession Duty Act.
10 Edw. VII. c. 60, s. 56. Rev. Stat. c. 24.

Letters of Administration.

57. Letters of administration which under *The Devolution of Estates Act* affect land shall be registered in the same manner as a probate of a will. 10 Edw. VII. c. 60, s. 57. Registration of letters of administration. Rev. Stat. c. 119.

Notice of Sale Under Mortgage.

Registration
of notice of
sale.

Rev. Stat.
c. 112.

58.—(1) A notice of sale of land under the provisions of *The Mortgages Act*, and a notice of exercising the power of sale contained in any mortgage and the affidavit or declaration of service thereof may be registered, and the same shall be registered in the same manner as an instrument affecting land, but it shall not be necessary to record the notice or the affidavit or declaration of service attached thereto in the registry book.

Proof for
registration.

(2) The affidavit or declaration shall be made by the person who served the notice, and shall prove the time, place and manner of such service, and that the copy delivered to the registrar is a true copy of the notice served.

Certified copy
to be
evidence.

(3) A copy of the registered notice and affidavit or declaration certified under the hand and seal of office of the registrar shall be *prima facie* evidence of the service of the notice as stated in the affidavit or declaration.

Proof of
notice of sale
under mort-
gage.

(4) Where the person who served the notice is dead or out of Ontario, or where it is proved to the satisfaction of a Judge of a County or District Court that the place of abode of such person is unknown, or that he is incapable of making an affidavit or declaration of service, or where service of such notice has been or is duly admitted any person who is or who claims to be interested in the registration of the notice may make proof before the judge of the service of the notice, and upon a certificate of such judge endorsed on or attached to the notice and signed by him to the effect that from the proof adduced by the person producing the proof, naming him, he is satisfied of the due service of the notice, the registrar shall register the notice and certificate.

Where notice
of sale lost
and cannot be
produced.

(5) Where the notice cannot be produced to be registered any person who is or who claims to be interested in the registration of the notice may make proof before the judge of the service thereof and of the inability to produce the same, and upon depositing a certificate of such judge to the effect that from the proof adduced by the person producing the proof, naming him, he is satisfied of the due service of the notice upon the person served, naming him, and that the same cannot be produced the registrar shall register the certificate, and a copy of such certificate under the hand and seal of the registrar shall be *prima facie* evidence of the facts therein stated.

Other registry
offices.

(6) Where a notice of sale or a certificate of a judge under subsections 4 or 5 has been registered, the same may be registered in any other registry office by depositing a copy thereof, certified in the manner provided by section 44.

[As to Registration of Orders and Judgments for Alimony, see *The Judicature Act, Rev. Stat. c. 56, s. 73*; as to Registration of Notice of Seizure by Sheriff of a Mortgage, see *The Execution Act, Rev. Stat. c. 80, s. 25*.

Instruments executed before the 1st January, 1866.

59. The registration of an instrument executed before the 1st day of January, 1866, may be made through a memorial or by certificate or otherwise, as provided by the law in force before that date. 10 Edw. VII. c. 60, s. 59.

60. The proof that would before the first day of January, 1866, have been sufficient for the registration of an instrument executed before that date, shall be sufficient for the registration hereafter of any such instrument, but the instrument shall be recorded at full length, and the memorial and affidavit shall be deposited with the registrar in lieu of the original. 10 Edw. VII. c. 60, s. 60.

61.—(1) An instrument which has been registered by memorial, and has endorsed thereon a certificate of the registration thereof, may be re-registered in the same or any other registry division by the production of the original instrument and by the deposit of a copy with an affidavit verifying the same.

(2) The registrar shall record the instrument, the affidavit of verification and the certificate of former registration at full length, and shall write in the margin of the registry book the words "Original not deposited," and, where the former registration was made in the same office, the registrar shall write upon the entry of the memorial in the registry book a memorandum as follows: "Re-registered and recorded in full as No. _____," giving a reference to the number and registry book where the instrument is recorded in full, and he shall also note the re-registration in red ink wherever the memorial is entered in an abstract index.

(3) The registrar shall also endorse upon the original instrument a certificate of the re-registration, Form 8. 10 Edw. VII. c. 60, s. 61.

Discharges of Mortgages.

62. In the case of a registered mortgage the registrar on receiving a certificate, Form 10, executed by the mortgagee, his executors, administrators or assigns, and duly proven in the manner provided for the proof of other instruments, shall register the same, and record it and every affidavit attached to or endorsed on it, at full length in the proper order, in the registry book, and number it in like manner as other instruments are required to be registered, recorded and numbered. 1 Geo. V. c. 17, s. 31 (1).

Discharge of mortgages held by amalgamated loan corporations.

63. Where a loan corporation which has acquired the assets of another loan corporation by amalgamation of such corporation and the certificate of such amalgamation has been registered desires to discharge any of the mortgages of such corporation it shall be sufficient to set forth in the instrument to be registered the fact of the assent of the Lieutenant-Governor in Council to such amalgamation with the date of the certificate of amalgamation and its registered number in the registry division in which the land affected is situate, or mentioning the Act by which the loan corporations were amalgamated or by which the agreement was ratified, and upon registration of the discharge the registrar shall enter in the abstract index the facts mentioned in the discharge. 10 Edw. VII. c. 60, s. 63.

Registration of discharge when mortgage paid off by subsequent mortgagee.

64.—(1) Where a mortgage has been paid off by any person advancing money by way of a new loan on mortgage on the same land and the mortgage so paid off or the discharge thereof is held by the mortgagee making the new loan, the discharge of the mortgage so paid off shall be registered within six months from the date thereof, unless the mortgagor shall, in writing, have authorized the retention of the discharge for a longer period.

Rights of subsequent mortgagee.

(2) The registration shall not affect the right, if any, of the mortgagee who may have paid off such mortgage, his assignee, or any person claiming under him, by purchase or otherwise, to be subrogated to the rights of the mortgagee whose mortgage debt has been so paid. 10 Edw. VII. c. 60, s. 64.

Registration of discharge given by person other than the mortgagee.

65.—(1) Where the person entitled to receive the mortgage money and to discharge a registered mortgage is not the original mortgagee, he shall, at his own expense, cause to be registered before the registration of the certificate of discharge all the instruments or documents through which he claims interest in and title to the mortgage money, and until such instruments or documents are registered the registrar shall not register such certificate of discharge.

Contents.

(2) The certificate shall mention the date and the date of registration and the registration number of each of the instruments or documents through which the person executing the certificate claims interest in and title to the mortgage money, and the names of the parties thereto.

Application of section.

(3) This section shall apply to powers of attorney where the certificate of discharge or prior instrument or document is executed by attorney, provided that it shall be sufficient in the certificate of discharge to state the date of each instrument, document or power of attorney and the names of the parties thereto, and to endorse on the certificate the date of registration and registration number of each instrument, document, or power of attorney, which endorsement shall be

signed by the person who signed the certificate, or his attorney or agent, and the endorsement shall be deemed to be part of the certificate.

(4) Where probate of will or letters of administration with the will annexed is required to be registered under this section, and the will is over seven folios in length, including the probate or letters, and does not affect land in the registry division, except in so far as the testator was the holder of a mortgage, it shall not be necessary to record the will at full length; but it shall be sufficient to deposit a copy of and record so much of the probate or letters as shows the grant of probate or letters and the appointment of executors or administrators. Registering probate or letters of administration.

(5) The copy shall be accompanied by an affidavit of the executors or administrators, or of one of them, or of his or their solicitor, verifying it and stating that there is nothing in the will limiting the right of the executors or administrators to receive the mortgage money and discharge the mortgage, and that the will does not affect land in the registry division in which the probate or letters is to be registered, except in so far as the testator was the holder of a mortgage comprising land in such registry division. Verification.

(6) Where the person whose duty it is to register such instruments or documents refuses or neglects to register the same within fifteen days after payment of the mortgage money to him, the person entitled to redeem the mortgage may, on giving ten days' notice in writing to the person so refusing or neglecting, apply in a summary manner to a Judge of the County or District Court of the county or district wherein the land or any part thereof mentioned in the mortgage is situate for an order directing that the person so refusing or neglecting shall within a time to be fixed by the Judge register such instruments or documents at his own expense, and the Judge, upon being satisfied by affidavit or oral evidence that the application is a proper one, may make the necessary order. Application to Judge for order to register instruments authorizing discharge to be given.

(7) On being satisfied of the due service of the notice the judge may proceed in the absence of the person so refusing or neglecting. Powers of judge.

(8) The notice shall state that it is given in pursuance of this section. 10 Edw. VII. c. 60, s. 65. Form of notice.

66.—(1) Where the holder of a mortgage desires to release or discharge part of the land comprised in it, or to release or discharge part of the money secured by the mortgage, he may do so by deed or by certificate to be made, executed, proven, and registered in the same manner and with the like effect to the land or money released or discharged as when the whole land and mortgage are released and discharged. Release of part only of lands mortgaged.

(2) The deed or certificate shall contain as precise a description of the land released or discharged as is required in an instrument of conveyance for registration, and also a precise statement of the particular sum so released or discharged. 10 Edw. VII. c. 60, s. 66.

Effect of registration of discharge of mortgage.

67. Every certificate of payment or discharge of a mortgage or of the conditions therein or of the lands or any part thereof, by the mortgagee, his executors, administrators or assigns at any time given, and whether before or after the time limited by the mortgage for payment or performance, if in conformity with this Act shall, when registered, be a discharge of the mortgage or of the lands in such certificate described, as the case may be, and shall be as valid and effectual in law as a release of the mortgage or of such lands and as a conveyance to the mortgagor, his heirs or assigns of the original estate of the mortgagor therein. 1 Geo. V. c. 17, s. 31 (2).

Discharge of mortgage seized under execution.

68.—(1) Where a sheriff, bailiff of a Division Court or other officer, under a writ or warrant of execution against goods, seizes a mortgage belonging to the person against whose goods the writ or warrant has issued, on or affecting land in Ontario, the payment of the mortgage money in whole or in part to the sheriff, bailiff, or other officer by the mortgagor, or any other person or any person claiming under him, shall satisfy the mortgage to the extent of such payment.

Form of certificate of discharge.

(2) After payment of the mortgage money or any part thereof, the sheriff, bailiff, or other officer shall, at the request and expense of the person requiring the same, give a certificate, Form 11, under the hand and seal of office of the sheriff or other officer, or under the hand of the bailiff and the seal of the Court of which he is bailiff.

Seal of Division Court.

(3) Upon the written request of the bailiff the clerk of the court shall affix to the certificate the seal of the court and he shall file the request of the bailiff in his office.

Proof of execution of certificate.

(4) The execution of the certificate shall be proved in the same manner as in the case of other instruments affecting land, and the certificate shall be registered in the same manner as other certificates of discharge.

Effect of certificate.

(5) The certificate when registered, if the same is of payment in full of the mortgage, shall be as valid and effectual in law as a release of the mortgage and as a conveyance to the mortgagor, his heirs, executors, administrators, or assigns, or any person lawfully claiming by, through or under him or them, of the original estate of the mortgagor as if executed by the execution debtor.

Effect of certificate of part payment.

(6) The certificate when registered, if the same is of payment of only a part of the mortgage money, shall be as valid

and effectual in law as a release of the mortgage, as to such part, as if executed by the execution debtor. 10 Edw. VII. c. 60, s. 67.

69. Instruments of the nature mentioned in section 36 may be discharged, and the land affected thereby released therefrom by depositing in the proper registry office a certificate of discharge, Form 12. ' 10 Edw. VII. c. 60, s. 68.

Discharge of instrument given in relation to purchase of goods.

By-Laws, etc.

70.—(1) Every by-law passed since the 29th day of March, 1873, or hereafter passed by a municipal council under the authority of which any street, road, or highway is opened upon any private property shall, before the same becomes effectual in law, be registered in the registry office of the registry division in which the land is situate; and the same shall be registered without further proof by depositing a copy certified under the hand of the clerk and the seal of the municipality.

Registration of by-laws passed since 29th March, 1873.

(2) Every by-law passed before the 29th day of March, 1873, and every order and resolution of the Quarter or General Sessions of the Peace passed before that day under the authority of which any street, road, or highway, has been opened upon any private property may at the election of any person or municipality interested and at the cost and charges of such person or municipality be registered by depositing a certified copy of the by-law under the hand of the clerk and the seal of the municipality, or a certified copy of the order or resolution of the Quarter or General Sessions under the hand and seal of the Clerk of the Peace.

As to by-laws etc., relating to roads made before 29th March, 1873

(3) Every by-law, proclamation, Order-in-Council, Order of the Ontario Railway and Municipal Board and other instrument of a public or *quasi* public nature whereby a village, town or city becomes incorporated, or the boundaries of any municipality are enlarged, diminished or altered, shall be registered in the proper registry office by the municipality passing or procuring the same, and a copy of a by-law, certified under the seal of the corporation and by the head and the Clerk of the municipality, and a copy of the proclamation, Order-in-Council, Order of the Ontario Railway and Municipal Board or other instrument certified by the Clerk of the Executive Council or the Secretary of the Board, as the case may be, shall be sufficient proof for the purpose of registration. 10 Edw. VII. c. 60, s. 69.

By-laws, etc., changes in municipal boundaries.

(4) A money by-law of a municipal corporation shall be authenticated for registration by the production of a duplicate original or a copy of the by-law certified under the seal of the corporation and the signature of the head thereof, or of the person presiding at the meeting at which the by-law has been passed and that of the clerk of the corporation.

Authentication of money by-laws.

Inspection of.

(5) The by-law or copy so certified shall be open to public inspection and examination at all reasonable times and hours upon payment of the proper fees. 3-4 Geo. V. c. 24, s. 6.

REGISTRATION AND ITS EFFECT.

Unregistered instruments after grant from the Crown to be void against subsequent registered purchaser or mortgagee.

71.—(1) After the grant from the Crown of land, and letters patent issued therefor, every instrument affecting the land or any part thereof shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without actual notice, unless such instrument is registered before the registration of the instrument under which the subsequent purchaser or mortgagee claims.

Exception as to certain leases.

(2) This section shall not extend to a lease for a term not exceeding seven years where the actual possession goes along with the lease, but it shall extend to every lease for a longer term than seven years. 10 Edw. VII. c. 60, s. 70.

Actual notice.

72. Priority of registration shall prevail unless before the prior registration there has been actual notice of the prior instrument by the person claiming under the prior registration. 10 Edw. VII. c. 60, s. 71.

As to equitable liens.

73. No equitable lien, charge or interest affecting land shall be valid, as against a registered instrument executed by the same person, his heirs or assigns; and tacking shall not be allowed in any case to prevail against the provisions of this Act. 10 Edw. VII. c. 60, s. 72.

Tacking.

Mortgages how affected by subsequent registered conveyances, where mortgage moneys paid subsequently.

74. Every registered mortgage shall as against the mortgagor, his heirs, executors, administrators, assigns and every other person claiming by, through or under him, be a security upon the land comprised therein to the extent of the money or money's worth actually advanced or supplied under the mortgage, not exceeding the amount for which such mortgage is expressed to be a security, notwithstanding that the money or money's worth, or some part thereof, was advanced or supplied after the registration of a conveyance, mortgage or other instrument affecting the mortgaged lands, executed by the mortgagor, his heirs, executors or administrators, and registered subsequently to such first-mentioned mortgage, unless, before advancing or supplying such money or money's worth, the mortgagee in such first mentioned mortgage had actual notice of the execution and registration of such conveyance, mortgage or other instrument; and the registration of such conveyance, mortgage or other instrument after the registration of such first mentioned mortgage, shall not constitute such actual notice. 10 Edw. VII. c. 60, s. 73.

Registry to be notice.

75. The registration of an instrument under this or any former Act shall constitute notice of the instrument to all

persons claiming any interest in the land, subsequent to such registration, notwithstanding any defect in the proof for registration, but nevertheless it shall be the duty of a registrar not to register any instrument except on such proof as is required by this Act. 10 Edw. VII. c. 60, s. 74.

76. An instrument which is or purports to be a power of attorney or authority to sell land in which the commission, payment for services, or other remuneration of the attorney or agent is made a charge on the land, shall, as against a subsequent purchaser or mortgagee for valuable consideration and as against the creditors of the person giving the power or authority, cease to charge the land with such commission, payment for services, or remuneration after the lapse of one year from the making of the instrument. 10 Edw. VII. c. 60, s. 75.

77. A will or the probate thereof and letters of administration with the will annexed registered within twelve months next after the death of the testator shall be as valid and effectual against subsequent purchasers and mortgagees as if the same had been registered immediately after such death; and in case the devisee, or person interested in the land devised in any such will, is disabled from registering the same within such time by reason of the contesting of such will or by any other inevitable difficulty without his wilful neglect or default, then the registration of the same within twelve months next after his attainment of such will, probate or letters of administration, or the removal of such impediment, shall be a sufficient registration within the meaning of this Act. 10 Edw. VII. c. 60, s. 76.

78. A deed of land made by a treasurer or other officer in pursuance of a sale for arrears of taxes shall be registered within eighteen months after the sale; and a deed of land sold under process issued from any Court shall be registered within six months after the sale; otherwise any person claiming under any such sale shall be deemed not to have preserved his priority as against a purchaser or mortgagee for valuable consideration without actual notice who has registered his conveyance before the registration of such deed. 10 Edw. VII. c. 60, s. 77.

79.—(1) Except in the manner hereinafter provided after an instrument has been entered in the abstract and alphabetical indexes, and has been recorded in the proper registry book, no entry shall be made in the abstract index or in the alphabetical index respecting such instrument; nor shall any alteration or correction be made in any entry previously made respecting any instrument, or in any copy of any instrument in any registry book.

(2) The registrar shall immediately, after becoming aware of any omission or error in recording, cause to be made in red

ink such entries, alterations or corrections as are requisite; and a memorandum stating the date of every such entry, alteration or correction shall be made in red ink in the margin of the index or registry book opposite or near thereto, and such memorandum shall be signed by the registrar or his deputy. 10 Edw. VII. c. 60, s. 78.

When instru-
ments to be
deemed
registered.

80. An instrument capable of and properly proved for registration shall be deemed to be registered when and so soon as the same is delivered either personally or by post to and received at his office during office hours by the registrar, or some officer or clerk in his office on his behalf, and thereafter no alteration shall be made by any person in such instrument. 10 Edw. VII. c. 60, s. 79.

MISCELLANEOUS PROVISIONS.

Plans.

Registration
of plans
when land
subdivided.

81.—(1) Where land is surveyed and subdivided for the purpose of being sold or conveyed in lots by reference to a plan which has not been already registered the person making the survey and subdivision shall within three months thereafter register a plan of the land on a scale not less than 1 inch to every 4 chains.

Contents
of plan.

(2) The plan shall show the number of the township, city, town or village lots and range or concession as originally laid out, and all the boundary lines thereof, within the limits of the land being subdivided except where such plan is a subdivision of a lot or lots on a former plan, in which case it shall show the numbers or other distinguishing marks of the lot or lots subdivided and the boundary lines thereof.

Scale and
particulars.

(3) The number or other distinguishing mark and the width both front and rear shall be marked on each lot of the subdivision, the scale shall also be marked on the plan, and such information as will show the depth of the lots and the courses of all the boundaries of, or the division lines between, the same and the governing line or lines to which such courses are referred shall also be indicated.

Idem.

(4) The position of all the posts or monuments, if any, planted by the surveyor, or of other objects marking the boundaries of any of the lots or the corners thereof shall also be shown.

Highways and
topographical
features.

(5) The plan shall also show all roads, streets, railway land, rivers, canals, streams, lakes, millponds, marshes or other marked topographical features within the limits of the land so subdivided, together with such other information as is required to show distinctly the position of the land.

Designation
of lots.

(6) On every such plan the lots shall be so described and designated by numbers, letters or words that there shall not

be more than one lot on such plan described and designated by the same number, letter or word, notwithstanding that the lots are on different sides of the same street or on different streets or in different blocks, and where the designation is by number the lots shall be numbered consecutively.

(7) The plan shall be mounted on stiff pasteboard of good quality, and when it exceeds thirty inches in length by twenty-four inches in width shall be folded so as not to exceed that size. Plans to be mounted.

(8) The plan, before being registered, shall be signed by the person or the chief officer of the corporation by whom or on whose behalf the same is deposited, and shall also be certified by an Ontario Land Surveyor, Form 13. 10 Edw. VII. c. 60, s. 80 (1-8). Duty of Registrars thereafter.

(9) In the case of a survey hereafter made the plan shall be accompanied by a copy certified by the surveyor by whom the survey was made to be a true copy of the field notes, if any, of the survey. 1 Geo. V. c. 17, s. 31 (4). Registration of field notes and plans.

(10) After the registration of the plan the registrar shall keep an index of the land described and designated by any number or letter on the plan by the name by which it is so designated.

(11) Every instrument affecting the land or any part thereof, executed after the plan is registered, shall conform and refer thereto, otherwise it shall not be registered, except in cases provided for by section 85, and except, also that where a mortgage has been registered before the registration of the plan, any assignment, discharge, final order of foreclosure of the mortgage, vesting order or conveyance under a power contained in or exercisable under the mortgage, shall be registered against the land as described in the mortgage. Instruments must conform to such plan.

(12) In the case of refusal or neglect by the person making the subdivision, for two months after demand in writing for that purpose, to register the plan, in accordance with the provisions of this Act, when required by any person interested therein or by the Inspector so to do he shall incur a penalty of \$20 for every calendar month which thereafter elapses without the plan being registered, recoverable under *The Ontario Summary Convictions Act*. Exceptions.

(13) The signature on a plan shall be witnessed and verified as in the case of an instrument. Penalty for refusing to register plan.

(14) The registrar shall not register a plan which does not comply with the provisions of this Act; nor shall he register a plan on which a road or street less than sixty-six feet wide is laid out unless the assent of the proper municipal council is registered therewith. Verification of signature to plans.

(15) The registrar shall not register a plan of a subdivision of land for which the Crown patent has not issued unless Conditions as to registration of plans.

Plans of unpatented lands.

the assent of the Minister of Lands, Forests and Mines to such registration is endorsed on the plan.

Registrar not to file plans for any one but owner nor without consent of mortgagees.

(16) The registrar shall not register a plan of a subdivision of land unless the person by whom or on whose behalf the same is tendered for registration appears on the registry books to be the owner of the land, nor unless the consent in writing of all persons who appear by the registry books to be mortgagees of the land is endorsed on the plan and signed by such person, or in the case of a corporation, by its chief officer, and such signatures are duly verified by affidavit.

Duty of the Registrar on receiving plan.

(17) When any such plan has been so registered the registrar shall make a record of it and enter on it the day and year on which the same is registered. 10 Edw. VII. c. 60, s. 80 (9-17).

When approval of Municipal Council required.

(18) The registrar shall not register any plan upon which any street, road or lane is laid out unless there is registered therewith the approval of the proper municipal council or the order of the Judge of the County or District Court of the county or district in which the land lies approving of such plan made upon notice to such council, but this subsection shall not apply to cases submitted to The Ontario Railway and Municipal Board under the provisions of *The City and Suburbs Plans Act* for the approval of that Board. 10 Edw. VII. c. 60, s. 80 (18); 3-4 Geo. V. c. 24, s. 7.

Rev. Stat. c. 194.

Application of this section.

(19) Subject to the provisions of section 86 this section shall apply as well to land already surveyed and subdivided as to that which may hereafter be surveyed and subdivided. 10 Edw. VII. c. 60, s. 80 (19).

Plan index book.

82. The Inspector may direct that a plan index book, in the form prescribed by him, shall be kept by the registrar, and the Municipal Treasurer shall pay to the registrar on the order of the Inspector such sum as he may direct for the preparation in the first instance of such book and the work incidental thereto. 10 Edw. VII. c. 60, s. 81.

Abstract index to subdivisions of township or park lots in urban municipality.

83.—(1) Whenever the Inspector deems that the public convenience so requires he may direct the registrar to subdivide any township, park or other lots in a city, town or village into such blocks for abstract purposes, as, having regard to conveyances registered upon such lots and otherwise, he considers most convenient; and in such case an abstract index shall be prepared by the registrar for each of such blocks as if the same had been originally a separate lot, and the same shall extend from the Crown Patent onwards or from or to such other date as the Inspector may direct, and shall contain those registrations only which affect the subdivision to which the index relates.

Idem.

(2) Where the original lines of the lots do not form the boundaries of such blocks public streets or such other limits

as the Inspector directs shall be taken as the boundaries thereof.

(3) Where a plan of a subdivision of a lot or part of a lot has been or is hereafter registered the registrar, when directed so to do by the Inspector, shall prepare an abstract of all instruments affecting the part subdivided, and enter the same in the page or pages of the abstract index book immediately preceding the abstract as to the first lot on such plan. Abstract index to original lots.

(4) Whenever and as often as a further subdivision of any of the lots on a plan is made the registrar, when directed so to do by the Inspector, shall prepare and enter in like manner an abstract of all instruments affecting the part so subdivided from the registration of the previous plan. Idem.

(5) The registrar shall be allowed for preparing such abstracts, so far as the same relate to instruments registered prior to the Inspector's directing the subdivision, such amount as the Inspector may determine to be reasonable for the services, and the same shall be paid by the owner who registers the plan, or by the county or city, as the Inspector may direct. Remuneration of registrar.

(6) For abstracts prepared for the purposes of plans hereafter registered the registrar shall be entitled to receive from the persons registering such plans the prescribed fees for preparing an abstract in addition to the fees to be paid for registering such plans. 10 Edw. VII. c. 60, s. 82. Idem.

84. No instrument referring to an unregistered plan shall be registered unless an instrument referring to such plan has been already registered in respect of the same land; and if the registrar objects to register an instrument on the ground that it refers to an unregistered plan he may refuse to register such instrument unless the person desiring its registration refers the registrar to the number of an instrument previously registered in respect of the same land referring to the unregistered plan. 10 Edw. VII. c. 60, s. 83. Registration of instrument referring to an unregistered plan.

85.—(1) Where an instrument which does not conform and refer to the proper plan has been duly executed and any party thereto has died, or where it would, in the opinion of the registrar, be impossible or inconvenient to obtain a new instrument containing the proper description, such instrument may be registered if accompanied by an affidavit, Form 14, annexed thereto or endorsed thereon. When instruments not conforming to proper plan may be registered.

(2) The registrar shall thereupon enter such instrument in the abstract index in which the subdivision is entered under the lots designated in the affidavit, and no entry shall be made in the abstract index of the land before its subdivision. 10 Edw. VII. c. 60, s. 84. Duty of registrar.

Plan not binding until some sale is made under it: alterations in plan.

86.—(1) A plan, although registered, shall not be binding on the person registering the same, or upon any other persons, unless a sale has been made according to such plan, and in all cases amendments or alterations thereof may be authorized or ordered to be made by a Judge of the Supreme Court or by a Judge of the County or District Court of the county or district in which the land lies, on application for the purpose and upon hearing all persons concerned, upon such terms and conditions as to costs and otherwise as may be deemed just. 10 Edw. VII. c. 60, s. 85 (1); 3-4 Geo. V. c. 24, s. 8 (1).

Application for filing plan may be made by owner for the time being.

(2) Any such application may be made either by the person filing the plan or by the owner for the time being of any of the land covered thereby.

Appeal.

(3) An appeal shall lie from any such order to a Divisional Court.

Consent of owner to alteration or closing of road.

Powers of municipal corporation not to be interfered with.

(4) No part of a road, street, lane or alley upon which any lot of land sold abuts, or which connects any such lot with or affords access therefrom to the nearest public highway, shall be altered or closed up without the consent of the owner of such lot; but nothing herein shall interfere with the powers of municipal corporations with reference to highways. 3-4 Geo. V. c. 24, s. 8 (2).

When plan must be registered in case of lands subdivided before 4th March, 1868.

87. In sales of land under surveys or subdivisions made before the 4th day of March, 1868, where such surveys or subdivisions so differ from the manner in which such land was surveyed or granted by the Crown that the parcel so sold cannot be easily identified unless the plan is registered, the plan shall be registered if still in existence and procurable for registration, and if it is not a new plan shall be made by and at the joint expense of the persons who have made such surveys or subdivisions, and of all others interested therein, by an Ontario Land Surveyor or as nearly as may be according to the proper original survey or subdivision, and the same, when so made, shall be registered as if under section 81. 10 Edw. VII. c. 60, s. 86.

Plans of cities, towns or villages to be registered in certain cases.

88.—(1) Where a city, town or village or territory, the inhabitants of which are not incorporated, comprises different parcels of land owned at the original division thereof by different persons, and the same were not jointly surveyed and one entire plan of such survey made and registered, the municipal council of the township within which such territory is situate, or of such city, town or village, upon the written request of the Inspector or of any person interested, addressed to the clerk of the municipality, shall immediately cause a plan of such city, town, village or territory to be made in accordance with this Act, and to be registered in the registry office of the registry division within which the municipality lies.

(2) The plan shall have endorsed thereon the certificates of the clerk and head of the municipality and the surveyor that the same is prepared according to the directions of the municipality and in accordance with this Act, and the corporate seal of the municipality shall be attached to the plan. Authentication of plan.

(3) Where such territory is situate in two or more townships the Inspector may, by a written order, cause the plan to be made and registered, and where the territory is situate in two or more registry divisions a duplicate of such plan shall be registered in each of such registry divisions. Registration of plan of territory situate in more than one township.

(4) The plan shall have endorsed thereon the certificate of the surveyor that the same has been prepared according to the order of the Inspector, and such order or a copy thereof shall be attached to or endorsed on such plan; and any plan of territory situate in two or more townships heretofore prepared upon the request of the Inspector may, in like manner, be registered, and shall when so registered be as valid as if the same had been prepared upon the order of the Inspector. Certificate of surveyor to be endorsed on plan.

(5) The expense of the preparation and registration of a plan of territory, the inhabitants of which are not incorporated, situate wholly within one township may be paid wholly or in part by the municipality out of its general funds, or the same may wholly or in part, at the option of the municipality, be paid by a special rate to be levied by assessment on all rateable property comprised in such territory described by metes and bounds in a by-law to be passed for the purpose of levying such rate. Expense.

(6) The expense of the preparation and registration of a plan of territory, the inhabitants of which are not incorporated, situate in two or more townships shall be paid out of the general funds of the municipalities in which the territory is situate, in such proportions as the Inspector may order, and any municipality may levy its proportion of such expense, or so much thereof as the council sees fit, by assessment on all rateable property comprised in the part of the territory situate in such municipality as described by metes and bounds in a by-law to be passed for the purpose of levying such rate. Expenses of registering plan of such territory, how apportioned.

(7) Upon the production to the registrar of a certificate signed by the head of the municipal council concerned certifying that a surveyor has been employed by the council to prepare a plan for registration under this section, the surveyor named in such certificate shall be entitled, within six months from the date thereof, to make personal searches of the books, plans and instruments in the registry office for the purpose of enabling him to prepare such plan on payment of the ordinary fees payable for searches and productions up to an aggregate amount not exceeding \$25, and for all further searches and productions in excess of \$25 on payment of one-half of the ordinary fees. Rights of surveyor.

Payment of expenses.

(8) Except as in this section is otherwise provided the expense of the preparation and registration of the plan shall be paid out of the general funds of the municipality.

Penalty on municipality defaulting.

(9) In case of the neglect or refusal of a municipality to comply with all the requirements of this section within six months next after being required so to do the municipality shall incur a like penalty to that provided by subsection 12 of section 81, recoverable under *The Ontario Summary Convictions Act*.

Rev. Stat. c. 90.

Registration of plans of township subdivisions in certain cases.

(10) Where land in a township has been or shall hereafter be sold under surveys or subdivisions made in a manner which so differs from that in which such land was surveyed or granted by the Crown that the parcel sold cannot be easily identified, and the plan has not been registered under this or any other Act, the council of the township may, upon the written request of the Inspector or of any person interested, cause a plan of such land to be made and registered in the same manner and with the same effect as in the case of territory inhabitants of which are not incorporated; and the expenses of the preparation and registration of the plan shall be paid by a special rate to be levied by assessment on the land comprised in such plan as described in a by-law to be passed for the purpose of levying such rate.

Plans of municipalities — what to be shown on.

(11) A plan prepared under the provisions of subsections 1 and 10 shall show such subdivisions of original lots as are shown by the registered plan, and such as are not so shown but appear from the instruments relating to such land, and the plan shall be prepared without adding to the costs thereof the expense of any actual survey on the ground except such as may be necessary to connect the subdivisions or parcels of land and to show any natural or artificial boundaries of the same which cannot be shown on the new plan from the information contained in the registered plans and instruments.

Obligations not impaired.

(12) Nothing in this section shall relieve any person from any liability, duty, obligation or penalty provided or imposed by or under any of the provisions of this Act.

Power of County Judge to order new plans to be filed.

(13) Where any land has been sold or conveyed in lots or parcels by metes and bounds, or in any other manner without a plan having been registered under this or any other Act showing such subdivisions, or where parts of lots shown by a registered plan have been sold or conveyed, and the lots or parcels so sold or conveyed are not distinguished by numbers or letters, a Judge of the County or District Court of the county or district in which the land is situate, on the application of the Inspector, after such notice as the Judge may deem reasonable, may make an order directing the registrar to have the same, or any part thereof, laid out into lots or parcels in such manner and numbered as the Judge shall think fit, and a plan or plans thereof to be made in accordance with the records in the registry office, or from actual survey, as

may be found necessary, and registered in accordance with the provisions of this Act, and the order of the Judge shall be endorsed on or attached to the plan and signed by him.

(14) The costs and expenses of and incidental to the appli-^{Costs.} cation and the plan and the registration thereof shall be borne by the person or municipality to be named by the Judge in the order.

(15) On filing the order with the clerk the same may be enforced as if it were a judgment of the court.

(16) The registration of the plan shall be binding on all ^{Effect of} persons subsequently dealing with the land or any part thereof ^{registration.} included in the plan or any interest in or concerning the same, but shall not affect the rights or interests of any owner or other person entitled at or before the date of registration.

(17) Where the land proposed to be subdivided by plan ^{Contribution} under subsection 13 comprises 5,000 acres or upwards, which ^{by Crown to} was granted by the Crown without being subdivided into lots, ^{sub-dividing} the Inspector may cause the Attorney-General to be notified ^{and surveying} of the application, and the Attorney-General, on behalf of the Crown, may either submit that the Crown shall pay or contribute such part of the costs and expenses, mentioned in subsection 14, as the Judge may determine to be reasonable, or the Attorney-General may consent, on behalf of the Crown, that the Crown shall pay and contribute a definite part of such costs and expenses, and in either of such cases the Judge may direct by what person or municipality the remainder of such costs and expenses shall be borne, and any such order may be entered and filed and may be enforced as against such person or municipality in the same manner as the order provided for in subsection 14. 10 Edw. VII. c. 60, s. 87.

89.—(1) Every person who is required to register a plan ^{Deposit of} shall, with the plan, deposit with the registrar a duplicate ^{duplicate plan} thereof, and a copy of the surveyor's field notes, if any, ^{and field notes.} certified to be such by the surveyor who prepared the plan, and the registrar shall endorse on the duplicate a certificate showing the number of such plan and the date when the plan was registered, and the duplicate shall, without fee, be delivered ^{Delivery of} by the registrar to the clerk, treasurer or assessment commis- ^{duplicate to} sioner of the local municipality in which the land is situate. ^{municipality.}

(2) The registrar shall not register any such plan unless ^{Duty of} a duplicate thereof and a certified copy of the surveyor's field ^{registrar.} notes, if any, are deposited in accordance with the provisions of this section. 10 Edw. VII. c. 60, s. 88; 1 Geo. V. c. 17, s. 31 (3).

Re-registration Where Registry Books Lost, etc.

90. Where the registry books and papers were, before the ^{Re-registration} 4th day of March, 1868, lost or destroyed, and a memorial ^{in case registry} cannot be produced, upon proof being made to that effect ^{books or papers} ^{are lost or} ^{destroyed.}

before a Judge of any Court of Record to his satisfaction as evidenced by a certificate under his hand, the Registrar may re-register an instrument upon production thereof, and no further proof shall be required than the original certificate of registration endorsed on such instrument and the instrument shall have priority according to the date of the original certificate and shall be preserved by the Registrar with the records of his office. 10 Edw. VII. c. 60, s. 89.

Inspector may
order copying
of memorials.

91. Where memorials have not been copied into the registry books in their proper order the Inspector may cause the same to be entered in proper books to be procured for the purpose, in the manner provided by section 23, and the registrar shall be paid therefor in the same manner as under clause (1) of section 92. 10 Edw. VII. c. 60, s. 90.

[As to list of Crown Grants being furnished to Registrar, see The Public Lands Act, Rev. Stat. c. 28, s. 25, and as to proceedings where land patented is in territory, under The Land Titles Act, see that Act, Rev. Stat. c. 126, s. 159.]

Fees of Registrars.

Fees.

92. A registrar shall be entitled to the following fees, except where otherwise provided:

For registra-
tions general.

(a) For the necessary entries and certificates in registering every instrument, other than those herein-after specially provided for, including among such certificates the certificate on the duplicate, if any, 40 cents;

(b) For registering every such instrument, \$1;

If the instrument exceeds 700 words, at the rate of 15 cents for each additional 100 words or fractional part thereof up to 1,400 words, and at the rate of 10 cents for each additional 100 words or fractional part thereof over 1,400 words;

If the instru-
ment includes
different lots
in different
localities.

If the instrument embraces lots or parcels of land, situate in different municipalities in the same registry division, the registration and copying of such instrument, together with all necessary entries and certificates in connection therewith, shall be considered separate and distinct registrations for each municipality in which the land is situate, and shall be paid for as follows:

Where the aggregate copying does not exceed 700 words, \$1.40; where it exceeds 700 words, 15 cents for every 100 words or fractional part thereof up to 1,400 words, in addition to the sum of \$1.40;

Where it exceeds 1,400 words, the sum of 10 cents for every 100 words or fractional part thereof in

addition to the above charges; the fees shall include all certificates and necessary entries, but if the instrument embraces more than 4 different lots or parcels of land in the same municipality, the registrar shall be allowed a fee of 5 cents for entering each lot or parcel in excess of 4, but not to exceed \$5 for such entries up to 100 entries, and where the instrument embraces more than 100 lots or parcels in the same municipality the registrar shall be allowed an additional fee of 2 cents for entering each lot or parcel in excess of 100.

- (c) For searching the registry books and indexes relating to the title of any lot or part of a lot as originally surveyed or patented by the Crown, or as afterwards subdivided into smaller lots, shown by any registered plan thereof, when not exceeding 4 references, 25 cents and 5 cents for every additional reference up to 50 references and 5 cents for every additional 2 references over 50; For searches as to title.

In no case shall a general search into the title to any particular lot, piece or parcel of land exceed the sum of \$3;

In this clause "reference" shall mean a search of a copy of an instrument in the register, and if the abstract indexes only are examined, the total fee for searching any such lot or part of a lot, including 4 references, shall be 25 cents;

"Lot" shall mean one parcel of land as originally patented by the Crown and where such parcel has been subdivided shall include any one of the lots in any such subdivision or re-subdivision, a plan of which has been registered;

No person shall make copies of or extracts from any instrument, document, book, paper or record in the registry office, or of any matter contained therein, to an extent in the aggregate exceeding 300 words for any one lot or part of a lot, except on payment, in addition to the fees for search, of 5 cents for each 100 words or fraction thereof in excess of 300 words;

Where subsequent to the registration of a mortgage the land in such mortgage has been subdivided by plan and searches are made for the purpose of ascertaining subsequent grantees or incumbrancers in sale, foreclosure or other proceedings under such mortgage, the person searching, on producing a statutory declaration that the searches are being made for that purpose, shall be entitled to make such searches on all the lots in the subdivision on Search to ascertain persons interested in lands divided subsequently to registration of mortgage.

payment of a fee of 10 cents for each lot, but so that the whole fee for searches shall not exceed \$2.

Searching
alphabetical
index.

- (d) For searching, if specially required, the alphabetical index of names referred to in section 32 as to each name in the books of any one township, or other municipality in the registry division, 25 cents; but if a general search as to any such name is made throughout the registry division, the aggregate of fees for such search shall not exceed \$1;

General
search.

- (e) For searching, if specially required, the general registry book for the whole registry division, referred to in section 23, as to each name, the sum of 25 cents;

Abstract
titles.

- (f) For an abstract of title to any specific parcel certified by the registrar containing such particulars as to any number of the registered instruments affecting such parcel as the applicant may require, 25 cents;

When such abstract exceeds 100 words, 15 cents for every additional 100 words;

For copies of instruments when required, 10 cents for each 100 words;

Where there are two or more lots for which abstracts are required and the entries on such lots are identical the registrar shall not be entitled to make an abstract for each lot separately, but the abstracts of title of such lots shall be included in one abstract, and the fees therefor shall be the same as if the extract applied to one lot only, except that the registrar shall be entitled in addition thereto to a fee of 25 cents for a search on each lot after the first lot, and for the first lot he shall be entitled to the same fees as are payable in respect of one lot;

Where there are two or more lots for which abstracts are required and the entries on such lots are partly identical, the registrar shall make a full abstract for one of the lots and enter in the same all the lots to which each instrument refers, and in the abstract of the other lots he shall only include entries affecting those lots separately.

Certificates.

- (g) For each certificate furnished by the registrar, except a certificate under paragraphs *a* or *b*, 25 cents;

Fees for
registering
plan.

- (h) For registration of any plan of city, town or village lots, including all necessary entries connected therewith, \$1; but if the plan embraces more than 20 lots, the registrar shall be allowed a fee of 5

cents for each lot in excess of 20 up to 100 lots, and a fee of two cents for each lot in excess of 100;

- (i) For registering each duplicate original certified copy of a money by-law..... \$2.00 Fees for registering money by-law.
- (j) For making search for the same or inspection and examination of entries connected therewith.. \$0.50 Fees for searches, etc.
- (k) For searches as to the names of registered owners and as to mortgages under subsection 16 of section 81, in connection with the registration of a plan, the sum of \$1;
- (l) For furnishing the copies required under sections 26 and 28, 10 cents for each 100 words or fraction thereof; Statement under sections 26 and 28.
- (m) For repairing any book, or copying, mounting, or binding plans, or for new plans and surveys, or for new abstract indexes, such sums as the Inspector may order in writing, specifying the nature of the service; Repairing books, etc.
- (n) For drawing each affidavit and swearing the deponent thereto, 25 cents, and the same fee for administering the oath when that only is required; Affidavits.
- (o) For exhibiting in the office each original registered instrument, including search for the same, 10 cents; and for producing each original registered instrument, including search for the same, in pursuance of a Judge's order or subpoena, the sum of 10 cents in addition to the registrar's ordinary witness fees; Showing originals.
- (p) For registering a certificate of discharge of mortgage, including a certificate under section 69, and every other certificate excepting certificates provided for in paragraph q, including all entries and certificates thereof, 50 cents; if the certificate affects more than four lots or parcels, a fee of 5 cents for each lot or parcel in excess of four; if the certificate affects two or more lots or parcels in the same registry division, or if the certificate or aggregate copying thereof exceeds 300 words, 10 cents for each additional 100 words or fractional part thereof, not to exceed \$5 in the whole in any case for the registration of the certificate; Certificates of discharge of mortgage.
- (q) For registering certificate of payment of taxes, 25 cents; On payment of taxes.
- (r) For registering certificate of amalgamation of loan corporations, together with a certified copy of any document mentioned in the certificate, \$4; Amalgamation of loan companies.

Administra-
tion.

(s) For registering letters of administration, \$1;

Notices of sale.

(t) For registering notice of sale of land under power in mortgage, 50 cents;

Affidavit for
general
register.

(u) For registering an affidavit for registering instrument entered in general register, 50 cents. 10 Edw. VII. c. 60, s. 91; 1 Geo. V. c. 17, s. 47; 3-4 Geo. V. c. 24, s. 9.

Fees in cases
not provided
for.

93. Where an Act of Ontario or of the Dominion of Canada requires or permits an instrument, document or plan to be deposited, filed or registered in a registry office or requires a registrar to perform any other duty, but omits to provide fees to the registrar for his services in connection therewith, and no fees therefor are provided by this or any other Act, the registrar, in the absence of any express provision requiring him to perform such services gratuitously, shall be entitled to such reasonable fees therefor as the Inspector shall fix to be paid by the person requiring the service to be performed. 10 Edw. VII. c. 60, s. 92.

Figures.

94. In abstracts and certificates where figures are used instead of words to denote dates, numbers and quantities the same shall be charged for as if each number, though composed of several figures, were but one word. 10 Edw. VII. c. 60, s. 93.

Inspection of
books in
registry offices
by Master or
Local Master
of titles.
Rev. Stat.
c. 126.

95. Subject to any general rules made under the authority of *The Land Titles Act*, a Master or Local Master of Titles may, by himself or by his clerks, without payment of fees, inspect all books and papers in a registry office for his own information as such Master, but this provision shall not apply to an application in which an abstract of title obtained for the purpose of such application has not been filed. 10 Edw. VII. c. 60, s. 94.

Disputes as
to fees.

96.—(1) Where a dispute arises in regard to any question of fees under this Act the registrar shall forthwith submit the same to the Inspector, and shall thereupon notify the person interested or his agent of such submission, and the decision of the Inspector upon the question submitted shall be final, unless appealed from and varied upon appeal as hereinafter mentioned.

Inspector's
decisions.

(2) All decisions given by the Inspector shall be in writing, and the appeal therefrom shall be in like manner, and subject to the same rules of practice as nearly as may be as an appeal from a Local Master. 10 Edw. VII. c. 60, s. 95.

Appeals.

Table of fees
to be posted
in Registrar's
office.

97.—(1) Every registrar shall keep posted up in some conspicuous place in his office a printed schedule of the fees and charges authorized under this Act. 10 Edw. VII. c. 60, s. 96.

(2) Every registrar shall, upon request of the person for whom the service is performed, furnish a statement in detail of the fees charged by him in respect of any matter for which fees are payable under the provisions of this Act. 10 Edw. VII. c. 60, s. 97.

Registrar to give statement of fees payable in any matter.

98. If the treasurer of a county or of a city in which a separate registry office is established, on the request of the registrar refuses or neglects to pay the fees and allowances for any services required by this Act, and performed by him which such treasurer ought to pay, the registrar may sue for and recover the same from the corporation of the county or city in any court of competent jurisdiction; and the Inspector's certificate of the amount and of the services rendered shall be *prima facie* evidence of the right to recover. 10 Edw. VII. c. 60, s. 98.

Recovery of fees from municipal corporations.

Evidence.

99.—(1) Every registrar shall keep a separate book in which he shall enter from day to day all fees and emoluments received by him, showing separately the sums received for registering each instrument, and for searches and for extracts or copies.

Registrars to keep accounts of fees.

(2) Every registrar shall annually, on or before the 15th day of January, make to the Lieutenant-Governor a return up to and including the 31st day of December of the next preceding year which shall show:

Registrar's annual returns.

- (a) The number of instruments registered and the fees therefor;
- (b) The number uncopied and uncomparred;
- (c) The number of patents registered and fees therefor;
- (d) The number of deeds registered and fees therefor;
- (e) The number of mortgages registered and fees therefor;
- (f) The number of discharges of mortgages registered and fees therefor;
- (g) The number of wills registered and fees therefor;
- (h) The number of leases registered and fees therefor;
- (i) The number of abstracts and fees therefor;
- (j) The number of searches and fees therefor;
- (k) The number of mechanics' liens and fees therefor;
- (l) The number of all other instruments registered or deposited and fees therefor;
- (m) The amount received for work done for which the county, city, or other municipality is liable;

- (n) The amount received for other services not enumerated above;
 - (o) The fees earned and not received;
 - (p) The gross amount of fees earned for the year;
 - (q) The gross amount earned for the previous year;
 - (r) The amount paid to the deputy registrar for services and the amount of other charges in connection with the office paid by the registrar;
 - (s) The amount of surplus paid to the county or city for the year and when paid;
 - (t) The amount of such surplus for the previous year;
 - (u) The net amount received by registrar. 10 Edw. VII. c. 60, s. 99 (1-2).
- (3) The return shall show the number of mortgages registered during the year,
- (a) In which the consideration is nominal or not specified;
 - (b) Which are given to secure the bonds or debentures of a corporation;
 - (c) In which the consideration is \$1,000 or under;
 - (d) In which the consideration is over \$1,000 and does not exceed \$2,000;
 - (e) In which the consideration is over \$2,000 and does not exceed \$5,000;
 - (f) In which the consideration is over \$5,000; and
 - (g) The aggregate amount of all such mortgages except those mentioned in clause (b). 10 Edw. VII. c. 60, s. 99 (3); 3-4 Geo. V. c. 24, s. 10 (1).
- (4) The return shall also contain such other information as may be prescribed by the Lieutenant-Governor in Council.
- (5) The return shall be transmitted to the Provincial Secretary. 10 Edw. VII. c. 60, s. 99 (4-5).

Registrar to
furnish clerk
or assessment
commissioner
with list of
conveyances.

100. The registrar shall, upon request, furnish to the clerk, or to the assessment commissioner or assessor of any municipality, a list of all conveyances whereby land in the municipality has been transferred, which have been registered in his office during the next preceding year or any part thereof, and in such list shall include the names of the grantor, the grantee, the consideration shown in each transfer, and a short description of the land conveyed, but shall not include leases for less than twenty-one years, mortgages, discharges

of mortgage, or other like instruments, and the registrar shall be entitled therefor to a fee of five cents for every instrument included in the list. 10 Edw. VII. c. 60, s. 100.

101.—(1) Every registrar shall be entitled to retain to his ^{Registrar's} own use in each year all the fees and emoluments received by ^{emoluments.} him in that year up to \$1,500.

(2) Subject to the provisions of section 104 of this Act ^{Percentage of} and of section 148 of *The Land Titles Act*, every registrar ^{gross income to} other than the registrars of East and West Toronto and for ^{municipalities.} the County of Wentworth, shall, of the fees and emoluments ^{Rev. Stat.} received by him in each year, pay to the treasurer of the ^{c. 126.} county or city for which or for part of which he is registrar, the following percentages:

- (a) On the excess over \$2,500 up to \$3,000, ten per cent.;
- (b) On the excess over \$3,000 up to \$3,500, twenty per cent.;
- (c) On the excess over \$3,500 up to \$4,500, thirty per cent.;
- (d) On the excess over \$4,500, forty per cent.

(3) Subject to section 104 of this Act and to section 148 ^{Percentage of} of *The Land Titles Act*, every registrar, other than the regis- ^{net income} trars of East and West Toronto and for the County of Went- ^{payable to} worth, of the net income of each year over \$1,500 shall further ^{municipality.} pay to such treasurer, for the use of the municipality, the ^{Rev. Stat.} following percentages: ^{c. 126.}

- (a) On the excess over \$1,500 up to \$2,000, ten per cent.;
- (b) On the excess over \$2,000 up to \$2,500, twenty per cent.;
- (c) On the excess over \$2,500 up to \$3,000, thirty per cent.;
- (d) On the excess over \$3,000, fifty per cent. 10 Edw. VII. c. 60, s. 101.

102.—(1) Subject to the provisions of section 148 of *The Land Titles Act* the registrars of East and West Toronto shall each pay to the Treasurer of the City of Toronto and the registrar of the County of Wentworth shall pay to the Treasurer of the City of Hamilton and of the County of Wentworth, subject to the provisions of subsection 2 of section 104, of his net income of each year over \$1,500, the following percentages: ^{Percentage} ^{payable out of} ^{net income of} ^{Toronto} ^{and Wentworth} ^{Registrars.} ^{Rev. Stat.} ^{c. 126.}

- (a) On the excess over \$1,500 up to \$2,000, ten per cent.;

(b) On the excess over \$2,000 up to \$2,500, twenty per cent.;

(c) On the excess over \$2,500 up to \$3,000, thirty per cent.;

(d) On the excess over \$3,000 up to \$6,000, fifty per cent.;

(e) On the excess over \$6,000, ninety per cent.

How
arrived at.

(2) The deduction from the gross income for the expenses connected with the work of or in conducting the business of the offices of the registrars for East and West Toronto shall not be increased beyond the amount paid therefor in the year 1895, without the consent, in writing, of the Inspector. 10 Edw. VII. c. 60, s. 102.

"Net income,"
meaning of.

103. For the purposes of this Act, "net income" shall mean the excess of all fees and emoluments, including receipts in the current year, whether on account of the earnings or salary of such year or of any former year, after deducting the disbursements incident to the business of the office and after payment to the municipality of the percentages mentioned in subsection 2 of section 101. 10 Edw. VII. c. 60, s. 103.

Payment of
surplus fees.

104.—(1) On the fifteenth day of January in each year every registrar shall transmit to the treasurer of the county or city for which, or for part of which, he is registrar a duplicate of the return required by section 99, and shall also pay to such treasurer for the use of the municipality the percentages required by this Act to be paid by him.

Return.

How computed
in certain
cases.

(2) Where a registry division includes a county or part of a county and a city or town separated from the county for municipal purposes, the percentages shall be paid to the treasurer of the county and to the treasurer of the city or town for the use of the municipality in the proportions in which the gross fees and emoluments are derived from extracts, searches, registrations, and other charges in respect of land situate in the county, and in the city or town respectively. 10 Edw. VII. c. 60, s. 104.

Registrars to
send statement
of amounts
paid to head of
municipality.

105. Every registrar shall, on or before the seventh day of January in each year, transmit to the head of any municipality to which he has made payments in accordance with the provisions of this Act during the next preceding year a statement signed by him showing the amounts so paid and the dates of payment, and the head of the municipality receiving such statement shall cause it to be laid before the auditors when auditing the accounts of that year, and shall also read it at the first meeting of the council held after its receipt. 10 Edw. VII. c. 60, s. 105.

106.—(1) Every registrar or person who fills the office of registrar and receives the fees and emoluments thereof for a part of any year shall, or in case of his death his executors or administrators shall, in respect of the fees and emoluments received by him during such part of a year, pay a proportion thereof to the municipal treasurer for the use of the municipality, under sections 101, 102 and 104, such proportion to correspond to the part of the year during which he so filled the office and to be computed for such part of the year at the same rate as the registrar would have been required to pay if he had filled the office for the whole year and received the fees and emoluments and made disbursements incident to the business of the office for the whole of such year at the same rate as for the part of the year during which he filled the office. Adjustment of percentage payable to municipality where registrar fills the office for part of year only.

(2) Every such registrar or other person, within fifteen days after the expiry of the part of the year for which he filled the office, and in case of his death his executors or administrators, within thirty days after his death, shall make a return under oath to the Lieutenant-Governor, up to and including the day of such expiry or death, which shall contain all the particulars required by subsection 2 of section 99, for such part of the year and shall transmit the same to the Provincial Secretary, and shall also, at the same time, transmit to the treasurer a duplicate of such return, and pay to him for the use of the municipality such proportion of the fees and emoluments received by such registrar or other person during the part of the year herein referred to as are payable to such municipality. Returns under oath.

(3) Subsection 2 of section 104 shall apply to the proportion of fees in this section mentioned. 10 Edw. VII. c. 60, s. 106. Computation.

107. In ascertaining the percentages payable under this Act there shall not be included in the fees and emoluments any sum receivable from a municipality for the preparation of abstract indexes, or for work done under sections 26 or 28 or subsection 5 of section 83 or section 100, nor shall anything in this Act apply to the fees or emoluments received on account of services as Returning Officer under *The Ontario Election Act* or *The Dominion Elections Act*. 10 Edw. VII. c. 60, s. 107. Certain fees not to be included in payments to municipalities. Rev. Stat. c. 8. R. S. C. c. 6.

108. The council of every county, city or separated town may by by-law authorize the warden, mayor or treasurer to inspect the books of office kept in any registry division in the county or city, for the purpose of testing the accuracy of the returns or computations of fees received by the registrar to a share or percentage of which the county, city or town is or may become entitled, and the registrar shall at all convenient times allow such books to be inspected for that purpose free of charge. 10 Edw. VII. c. 60, s. 108. Inspection of registry books by municipal officers.

Registry for
Thunder Bay.

109. The Registrar and Local Master of Titles for the District of Thunder Bay shall pay to the Treasurer of Ontario of his net income from the combined offices of each year over \$1,500, the following percentages:—

- (a) On the excess over \$1,500 up to \$2,000, 10%.
- (b) On the excess over \$2,000 up to \$2,500, 20%.
- (c) On the excess over \$2,500 up to \$3,000, 30%.
- (d) On the excess over \$3,000 up to \$6,000, 50%.
- (e) On the excess over \$6,000, 90%. 3-4 Geo. V. c. 24, s. 11.

Disbursements
subject to
revision of
Inspector.

110. The amount to be allowed for the disbursements of a registrar shall be subject to the revision and determination of the Inspector. 10 Edw. VII. c. 60, s. 109.

Lieutenant
Governor
may make
rules.

111.—(1) The Lieutenant-Governor in Council may make rules for the management of registry offices, and may, by such rules, confer on the Inspector such powers as may be deemed necessary for carrying out the provisions of this Act, and all other Acts relating to the duties of registrars.

To be laid
before
Assembly.

(2) Every such rule shall be laid before the Assembly within ten days from the making thereof if the Legislature is then in session, and if not in session, then within the first ten days of the session next after the making thereof. 10 Edw. VII. c. 60, s. 110.

INSPECTOR OF REGISTRY OFFICES.

Appointment
of Inspector,
and his duties.

112. There shall be an Inspector of Registry Offices, who shall be appointed by the Lieutenant-Governor in Council, and who, in addition to any other duties imposed by this Act, shall,

Inspection of
building.

- (a) Make as often as practicable a personal inspection of the building in which each registry office is kept, and of the books, deeds, memorials and other instruments in each office;

Books, etc.

- (b) See that the proper books are provided, that they are in good order and condition, that the proper entries and registrations are made therein in a proper manner and in a due and proper form and order, that the indexes are properly kept, and that all the memorials and other instruments are duly endorsed, certified and preserved;

Office hours.

- (c) Ascertain that the office is kept open at and for the proper times, and that it is at all times duly attended by the registrar or his deputy;

- (d) Settle on some uniform device for the official seals, ^{Seals of officials.} and see that the registrars supply themselves therewith;
- (e) Inspect all new abstract and alphabetical indexes, ^{New indexes.} and settle and certify the sums, if any, chargeable therefor;
- (f) Ascertain whether the proper plans required by this ^{Plans.} Act have been registered, and, where necessary, enforce the provisions of this Act as to the preparation and registration thereof, and instruct the Crown Attorney to take proceedings for that purpose;
- (g) Report upon any vacancies by death or otherwise in ^{Reporting vacancies.} the office of registrar or deputy registrar;
- (h) Inform the registrar how and in what manner he ^{Instruction of registrar and his duties.} shall do any particular act or amend or correct whatever the Inspector may find amiss; and if he finds the work improperly performed, order a new book or books to be prepared and completed by the registrar at his own expense;
- (i) Ascertain the sufficiency of the security furnished ^{Sufficiency or insufficiency of sureties.} by the registrar;
- (j) Report upon all such matters to the Lieutenant-Governor for his information and decision; and ^{Reporting to Lieutenant-Governor.}
- (k) Perform such other duties as the Lieutenant-Governor in Council may prescribe. 10 Edw. VII. c. 60, s. 111.

113. Where the Inspector in the performance of his duties ^{Evidence on investigations by Inspector.} under this Act has occasion to make an enquiry or to determine any matter he may require any person to give evidence on oath, and for that purpose may summon such person to attend as a witness, may enforce his attendance, may compel him to produce books, documents and things, and to give evidence in like manner as the Supreme Court may in civil cases. 10 Edw. VII. c. 60, s. 112.

114. Every registrar shall transmit to the Inspector such ^{Registrars to furnish information to Inspector.} particulars with reference to the business of his office as the Inspector may require. 10 Edw. VII. c. 60, s. 113.

115. Where it appears to the Inspector that the work of a ^{Duty of Inspector on finding work in arrear.} registry office is unduly in arrear he may employ such assistance as he deems necessary to perform the work in arrear, and the cost thereof shall be payable by the registrar to the persons entitled, on the certificate of the Inspector. 10 Edw. VII. c. 60, s. 114.

PENALTY FOR ALTERING BOOKS OR DOCUMENTS.

Penalty for
unauthorized
alteration of
entry.

116. Any person, except the registrar or other officer when entitled by law so to do, who alters any book, record, plan or registered instrument in any registry office, or makes any memorandum, word or figure in writing thereon, whether in pencil or in ink, or by any other means, or in any way adds to or takes from the contents of such book, record, plan or registered instrument shall incur a penalty of not less than \$5 and not more than \$100, recoverable under *The Ontario Summary Convictions Act*. 10 Edw. VII. c. 60, s. 115.

Rev. Stat. c. 90.

Instruments
affecting land
in former
City of West
Toronto to be
registered in
East and
West York.

117. Notwithstanding anything herein, until proclamation by the Lieutenant-Governor in Council to the contrary, all instruments affecting land in that part of the City of Toronto which formerly constituted the City of West Toronto shall continue to be registered in the registry office of the Registry Division of East and West York, and all books, instruments and documents relating to such land shall remain in that office. 10 Edw. VII. c. 60, s. 116.

FORM 1.

REGISTRAR'S OATH OF OFFICE.

County (or District) of } I (name and describe the deponent), having been
To Wit: } appointed to the office of Registrar, in and for the
(name of Registry Division, etc.), do swear that I
will well, truly and faithfully perform and execute
all the duties required of me, under the laws of Ontario, pertaining to the said office, so long as I continue therein, and that I have not given directly or indirectly, nor authorized any person to give, any money gratuity or reward whatsoever for procuring the said office for me.

Sworn before me, etc.

A Commissioner, etc.

A.B.

10 Edw. VII. c. 60, Form 1.

FORM 2.

CERTIFICATE RESPECTING REGISTRY BOOKS.

This register contains _____ pages, exclusive of index, and is to be used for the City (or Town, Village or Township) of _____, in the County (or District) of _____ for the recording of deeds, duplicates, and other instruments under the provisions of *The Registry Act*, and is provided in pursuance of the said Act.

Dated this _____

day of _____

, 19 _____

10 Edw. VII. c. 60, Form 2.

FORM 3.

ABSTRACT INDEX.

Township of , Lot No. in the Concession.

1	2	3	4	5	6	7	8	9
No. of In- stru- ment.	In- stru- ment.	Its Date.	Date of Regis- try.	Grantor.	Grantee.	Quan- tity of Land.	Consid- eration in con- veyance or amount of mort- gage money.	Re- marks.

NOTE.—The names of all the grantors and grantees should appear in the abstract index.

10 Edw. VII. c. 60, Form 3.

FORM 4.

ALPHABETICAL INDEX.

No. of Instru- ment.	GRANTOR.	GRANTEE.	No. of Instru- ment.	GRANTEE.	GRANTOR.

10 Edw. VII. c. 60, Form 4.

FORM 5.

AFFIDAVIT OF EXECUTION.

County (or District) of } I, (*name, residence and occupation*),
To Wit: } make oath and say:

1. That I was personally present and did see the annexed (*or within*) instrument (and a duplicate, *if any, according to the fact*) duly signed, sealed and executed by part thereto.

2. That the said instrument (and duplicate, *if any, according to the fact*) was (*or were*) executed by the said part at the of

3. That I know the said part

4. That I am a subscribing witness to the said instrument (and duplicate, *if any, according to the fact*).

Sworn, etc,

10 Edw. VII. c. 60, Form 5.

FORM 6.

AFFIDAVIT OF EXECUTION WHERE THE INSTRUMENT IS A SECURITY UNDER SECTION 36.

County (or District) of } I, (*name, residence and occupation*)
To Wit: } make oath and say:

1. That I was personally present and did see the annexed (*or within*) instrument (and a duplicate, *if any according to the fact*), duly signed, sealed and executed by part thereto.

2. That the said instrument was read over in my presence and explained to the said , and that he appeared perfectly to understand the same, and was informed that it might be registered as an incumbrance on his land.

3. That the said instrument (and duplicate, *if any, according to the fact*), was (*or were*) executed by the said part at the of

4. That I know the said part

5. That I am a subscribing witness to the said instrument (and duplicate, *if any, according to the fact*).

Sworn, etc.

A.B.

10 Edw. VII. c. 60, Form 6.

FORM 7.

CERTIFICATE OF THE JUDGE OF THE COUNTY OR DISTRICT COURT IN
LIEU OF AFFIDAVIT OF EXECUTION.

I,
Judge of the County (or District) Court of
County (or District) of \ the County (or District) of
To Wit: } certify that, from the proof adduced by
(name of the person producing the proof),
I am satisfied of the due execution of the within instrument (or
of the instrument whereof the within is a copy, memorial or duplicate,
as the case may be).

As witness my hand at the
day of 19 .

A.B.,
Judge.

10 Edw. VII. c. 60, Form 7.

FORM 8.

CERTIFICATE OF REGISTRATION.

I certify that the within instrument is duly
entered and registered in the Registry Office for the Registry Division of in Book for the of
at o'clock of the day of
19 .

Number

Registrar,
or Deputy Registrar.

10 Edw. VII. c. 60, Form 8.

FORM 9.

MINUTE OF REGISTRATION.

Entered and registered this day of
19 at o'clock m.

Registrar (or Deputy Registrar).

10 Edw. VII. c. 60, Form 9.

FORM 10.

DISCHARGE OF MORTGAGE.

To the Registrar of the Registry Division of
 I, , of , do certify that has satisfied all
 money due on, or to grow due on (or has satisfied the sum of \$
 mentioned in), a certain mortgage made by of to
 which mortgage bears date the day of 19 , and
 was registered in the Registry Office for the Registry Division of
 on the day of 19 , at minutes past
 o'clock, noon, in Book for as No. (here mention
 the date and the date of registration of each assignment thereof,
 and the names of the parties, or mention that such mortgage has
 not been assigned, according to the fact), and that I am the per-
 son entitled by law to receive the money, and that such mortgage
 (or such sum of money as aforesaid, or such part of the land as
 is herein particularly described, that is to say:) is therefore
 discharged.

Witness my hand this day of 19 .
 A.B.

Witness }
 }

10 Edw. VII. c. 60, Form 10.

FORM 11.

CERTIFICATE OF DISCHARGE OF MORTGAGE BY SHERIFF, ETC.

To the Registrar of the Registry Division of

I, A.B., of Sheriff of the County (or District) of
 [or Bailiff of the (number) Division Court of
 the County (or District of
 do certify that by virtue of an execution wherein C.D. is plaintiff
 and E.F. defendant, issued out of the Supreme Court (or as the
 case may be) and to me directed, I seized a certain mortgage
 made by one J.H. of (as described in the mortgage) bearing date
 the day of , 19 , and registered at
 of the clock in the noon, of the day of
 in Book for as No. to E.F.,
 of (as described in the mortgage), the defendant in the said
 execution named, and such mortgage has not been assigned (or has
 been assigned to the defendant: here set out date and date of regis-
 tration of assignment) and I do further certify that I have received
 from the said mortgagor (or from the executors, administrators, or
 assigns of the said mortgagor, as the case may be), the full amount
 of said mortgage (or \$ part of the mortgage money), and
 that such mortgage is therefore discharged (or that such mortgage
 is as to \$ part of the money thereby payable, discharged).

As witness my hand and seal of office (or the seal of the said
 Court) this day of 19 .
 A.B.

Witness, }
 C.D. }

10 Edw. VII. c. 60, Form 11.

FORM 12.

CERTIFICATE OF DISCHARGE OF INSTRUMENT CREATING A CHARGE.

To the Registrar of the Registry Division of
 County (or District) of } I, (name, residence and occupation),
 To Wit: } do hereby certify that of the
 of , in the County (or District) of
 (occupation) , has satisfied all money due or
 to grow due on (or has satisfied the sum of \$ mentioned in)
 a certain instrument made by of to
 which instrument bears date the day of 19 , and
 was registered in the Registry Office for the Registry Division of
 on the day of 19 , at
 minutes past o'clock noon, in
 Book for , as No. (here mention the
 date and the date of registration of each assignment thereof, and the
 names of the parties, or mention that such instrument has not been
 assigned, according to the fact), and that I am the person entitled
 by law to receive the money, and that such instrument (or such
 sum of money as aforesaid, or such part of the land as is herein
 particularly described, that is to say:)
 is therefore discharged.

Witness my hand this day of 19 .

A.B.

Witness {
 C.D }

10 Edw. VII. c. 60, Form 12.

FORM 13.

SURVEYOR'S CERTIFICATE OF PLAN.

I hereby certify that this plan accurately shows the manner in
 which the land included therein has been surveyed and subdivided
 by me; and that the said plan is prepared in accordance with the
 provisions of *The Registry Act*.

Dated 19 .

A.B.

Ontario Land Surveyor.

10 Edw. VII. c. 60, Form 13.

FORM 14.

AFFIDAVIT WHERE INSTRUMENT DOES NOT CONFORM TO PLAN.

County (or District) of } I, (name, residence and occupation),
 To Wit: } make oath and say:

1. To the best of my knowledge and belief, the land described in the within (or annexed) instrument is designated on Registered Plan No. as lots (describe same so as to conform to plan).

2. That a party to said instrument died on or about the day of 19 , (or as the case may be).

(or 2. That it is impossible (or inconvenient) to obtain a new instrument or a re-execution of the said instrument containing a description conforming to the said plan for the following reasons (here set out the facts).

3. That I have a personal knowledge of the matters herein deposed to.
 Sworn, etc.

10 Edw. VII. c. 60, Form 14.

FORM 15.

DECLARATION UNDER SECTION 34 (2).

County (or District) of } I, (name, residence and occupation),
 To Wit: } do solemnly declare that

1. I am a party (or as the case may be) to an instrument affecting land without local description, registered in the Registry Division of on the day of 19 , at minutes past o'clock noon, in Book , as number .

2. The said instrument affects the land within the said Registry Division hereinafter described, that is to say (here give a local description of the lands sufficient for the purposes of registering an instrument in the separate Registry Books under the Act.)

And I make this solemn declaration, etc.

Declared etc.

A.B.

10 Edw. VII. c. 60, Form 15.

SCHEDULE A.

LIST OF REGISTRY DIVISIONS.

Part 1.

The undermentioned TERRITORIAL DIVISIONS, (except as otherwise mentioned), constitute separate registry divisions:

The Counties of—

- | | |
|--|---------------------------|
| 1. Brant. | 17. Leeds. |
| 2. Bruce. | 18. Lennox and Addington. |
| 3. Carleton, excepting the City
of Ottawa. | 19. Lincoln. |
| 4. Dufferin. | 20. Norfolk. |
| 5. Dundas. | 21. Ontario. |
| 6. Elgin. | 22. Oxford. |
| 7. Essex. | 23. Peel. |
| 8. Frontenac, excepting the
City of Kingston. | 24. Peterborough. |
| 9. Glengarry. | 25. Prescott. |
| 10. Grenville. | 26. Prince Edward. |
| 11. Haldimand. | 27. Renfrew. |
| 12. Halton. | 28. Russell. |
| 13. Hastings. | 29. Simcoe. |
| 14. Huron. | 30. Stormont. |
| 15. Kent. | 31. Victoria. |
| 16. Lambton. | 32. Waterloo. |
| | 33. Welland. |
| | 34. Wentworth. |

The Cities of—

- | | |
|---------------|-------------|
| 35. Kingston. | 37. Ottawa. |
| 36. London. | |

The Provisional County of—

38. Haliburton; and

The Districts of—

- | | |
|-----------------|--|
| 39. Algoma. | 44. Parry Sound. |
| 40. Kenora. | 45. Rainy River. |
| 41. Manitoulin. | 46. Sudbury. |
| 42. Muskoka. | 47. Thunder Bay, excepting the
Electoral District of Fort
William. |
| 43. Nipissing. | |

Part 2.

The undermentioned ELECTORAL DISTRICTS, (except as otherwise mentioned), constitute separate registry divisions:

- | | |
|--|---|
| 48. Durham, East Riding. | 54. Northumberland, West Rid-
ing, and the Township of
West Monaghan. |
| 49. Durham, West Riding. | 55. Perth, North Riding, and
the Township of Logan. |
| 50. Lanark, North Riding, and
Town of Carleton Place. | 56. Perth, South Riding, except-
ing the Township of Lo-
gan. |
| 51. Lanark, South Riding. | 57. York, North Riding. |
| 52. Middlesex, West Riding. | |
| 53. Northumberland, East Rid-
ing. | |

58. The East and North Ridings of Middlesex constitute one registry division; and
59. The East and West Ridings of York constitute one registry division.
60. The Electoral District of Fort William constitutes a registry division.

Part 3.

The undermentioned registry divisions are constituted as hereinafter set forth:

61. East Toronto consists of all that part of the City of Toronto lying east of Spadina Avenue and Spadina Road, continued south and north to the boundaries of the city, the land on Spadina Avenue now occupied by Knox College, and the Islands constituting the southerly part of the said city.
62. West Toronto consists of all that part of the said city lying west of Spadina Avenue and Spadina Road, continued as aforesaid to the boundaries of the city.
63. Grey, North Riding, consists of the Townships of Collingwood, Derby, Euphrasia, Holland, Keppel, St. Vincent, Sarawak, Sullivan and Sydenham, and the Towns of Meaford, Owen Sound and Thornbury.
64. Grey, South Riding, consists of the Townships of Artemesia, Bentinck, Egremont, Glenelg, Normanby, Osprey and Proton, the Town of Durham, and the villages of Dundalk and Markdale.
65. Wellington, North Riding, consists of the Townships of Arthur, Minto, Maryborough, Peel and West Luther; the Towns of Harriston, Mount Forest and Palmerston, and the Villages of Arthur, Clifford and Drayton.
66. Wellington, South and Centre Ridings, consists of the Townships of Guelph, Eramosa, Erin, Nichol, Pilkington, West Garafraxa and Puslinch; the City of Guelph, and the Villages of Elora, Fergus and Erin.

NOTE.—The townships hereinbefore mentioned include all towns and villages situated within the limits thereof respectively.

10 Edw. VII. c. 60, Sched. A.; 3-4 Geo. V. c. 25, ss. 1, 2.

CHAPTER 125.

An Act respecting the Custody of Documents relating to Titles to Land.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Custody of Documents* Short title.
Act. 1 Geo. V. c. 27, s. 1.

2. In this Act “document” shall include whatever is Interpretation.
included in the word “instrument,” as defined by *The Registry Act*, and also any certificate, affidavit, statutory “Document.”
Rev. Stat. c. 124.
declaration, or other proof as to the birth, baptism, marriage, divorce, death, burial, descendants, or pedigree of any person, or as to the existence or non-existence, happening or non-happening of any fact, event or occurrence upon which the title to land may depend, and notices of sale, or other notices necessary to the exercise of any power of sale or appointment or other power relating to land. 1 Geo. V. c. 27, s. 2.

3. Any person having any document, forming or being a Person having custody of deeds, etc., may deposit them in registry office.
title-deed or evidence or muniment of title to land in Ontario, may deposit the same for safe custody in the office of the registrar of any registry division in which the document or a duplicate or copy or memorial or certificate thereof has been registered; or, where it does not appear by any endorsement thereon that the same or a duplicate or copy or memorial or certificate thereof has been registered, the document may be so deposited in the office of the registrar of any registry division in which any land to which the same relates is situate. 1 Geo. V. c. 27, s. 3.

4. Upon every such deposit the person depositing shall Requisition to be filed and receipt given.
deliver to the registrar a requisition in duplicate, Form 1, which may include any number of documents; and the registrar shall sign a receipt upon one of the duplicates for the documents therein mentioned, and shall deliver the receipt to the person by whom the deposit is made. 1 Geo. V. c. 27, s. 4.

5.—(1) Upon receiving the requisition and the documents Each document to be numbered and entered in deposit index and filed.
therein mentioned the registrar shall enter every document in consecutive order in a book, Form 2, to be called the “Deposit Index,” and shall therein number such documents consecutively, and shall endorse on each document the word “deposited,” with the date of deposit and the number of the entry thereof in the deposit index; and shall file the same in

consecutive order according to its number; and shall also endorse on the requisition the numbers so placed on the documents therein mentioned; and shall file all the requisitions in consecutive order according to such numbers.

Names to be entered in alphabetical index.

(2) The registrar shall also enter in an alphabetical index, to be called the "Alphabetical Deposit Index," the number of the document in the deposit index, and the name of every party to the document, or to the action, suit or proceeding to which the document relates, or if the same is a certificate or an affidavit, or a statutory declaration or other proof as to the birth, baptism, marriage, divorce, death or burial of any person, the name of such person.

Entry opposite registered instruments.

(3) Where it appears by any certificate of registration endorsed on the document that the same or a duplicate or a copy or memorial or certificate thereof is registered in his registry office, the registrar shall also enter in the margin of every registry book wherein the same is registered opposite the entry thereof the words, "See deposit index No. , 19 ,," referring to the number of the document in the deposit index and the date of the deposit. 1 Geo. V. c. 27, s. 5.

Notice to be sent to other registry offices where an instrument has been registered.

6.—(1) Where it appears by any certificate of registration endorsed on the document that the same is registered in any other registry division, the registrar with whom the same is deposited shall, within ten days after the deposit, send to such other registrar a notice thereof in duplicate, Form 3.

Fees to other registrars.

(2) The registrar receiving the notice shall be entitled to a fee of twenty cents for every document in respect of which he is required to make an entry.

(3) On receipt of the notice the registrar receiving the same shall enter in the margin of every registry book wherein the document appears to have been registered, opposite the entry thereof, the words, "See deposit index in Registry Office, No. , 19 ,," referring to the registry office from which the notice is received, and the number and date of the deposit therein, and he shall forthwith send an acknowledgment of the receipt of the notice written upon one of the duplicate notices.

(4) If such an acknowledgment is not received within fourteen days from the sending of the notice the registrar sending the notice shall send another like notice and shall repeat the same every fourteen days till the acknowledgment is received.

(5) Every such notice and acknowledgment shall be sent by registered post, and a sufficient sum to pay the registrar's fees and the postage shall be sent with the notice.

(6) All notices received from other registrars shall be filed by the registrar receiving the same in the order in which they

are received, and all such acknowledgments shall be filed by the registrar receiving them in the order of their receipt. 1 Geo. V. c. 27, s. 6.

7. The registrar with whom the deposit is made shall be entitled to the following fees to be paid at the time of the deposit by the person making the deposit:—

On every requisition	20 cents.
On every document deposited	10 “
For every notice necessary to be sent to other registrars (not more than one notice to any one registrar to be charged for)	15 “
Necessary postage on the notices and acknowledgments	
A sum sufficient to pay the fees under subsection 2 of section 6.	

1 Geo. V. c. 27, s. 7.

8.—(1) A receipt for payment of money on any registered instrument may be deposited in the registry office in which the instrument is registered, but it shall not be necessary to deliver any requisition with the receipt or to pay any fee for depositing the same or the entries in respect thereof, except the sum of twenty cents.

(2) The registrar shall receive and file in consecutive numerical order all receipts so deposited, and shall endorse thereon the number, the date of deposit, and the amount mentioned in the receipt, and shall write in the margin of the registry book wherein the instrument to which the receipt relates has been registered the words, “See receipt No. .” 1 Geo. V. c. 27, s. 8.

9. Any person shall be entitled to inspect and make or obtain copies of, or extracts from, any document deposited under this Act in like manner as in the case of instruments registered under *The Registry Act*; and the registrar shall be entitled to the same fees in respect thereof as in the case of registered instruments. 1 Geo. V. c. 27, s. 9.

10. The deposit of a document under this Act shall not be deemed a registration thereof within the meaning of *The Registry Act*; nor shall the admissibility or value of any document as evidence be affected by the deposit. 1 Geo. V. c. 27, s. 10.

11. The deposit of a document under this Act shall, while the document continues so deposited, be deemed a sufficient compliance with, and fulfilment of, any covenant or agreement entered into by any person to produce or allow the inspection of, or the making of, any copy of or extract from the document, and shall absolve any person liable for the production or custody thereof from any further liability in respect of such custody or production. 1 Geo. V. c. 27, s. 11.

Registrar to
keep safely.

12. The registrar with whom a document is so deposited shall keep the same safely in his office in like manner and with the same care as the instruments registered in his office; and he and his sureties shall be responsible in respect thereof in like manner as in respect of instruments registered under *The Registry Act*; and the registrar shall not part with the possession of any such document unless in accordance with the order of a court or a judge as hereinafter provided. 1 Geo. V. c. 27, s. 12.

Rev. Stat.
c. 124.

Expenses of
executors,
etc.

13. An executor, administrator or trustee may reimburse himself out of the estate any expense which he incurs in or about depositing any document which may come to his possession or control as such executor, administrator or trustee. 1 Geo. V. c. 27, s. 13.

Application
within 5
years to re-
move from
custody.

14.—(1) At any time within five years after the deposit of a document any person may apply to the Supreme Court or to the County or District Court of the county or district in which the deposit is made, or to a judge of either of such courts, for the delivery of the document to such person, and the court or judge may direct that the same shall be delivered by the registrar to the applicant, or to any person the court or judge directs, upon being satisfied that the applicant would, but for the deposit, be solely entitled to the possession of the document, and that the deposit thereof was made without his consent, or the consent of any person entitled at the time of the deposit to any interest therein, and, where the document relates to other land than that in which the applicant is interested, that there are reasonable grounds for removing the document from the custody of the registrar.

Notice of
application.

(2) Before making the order the court or judge may require such notice of the application, by advertisement or otherwise, to be given to the person by whom the deposit was made, or to any other person, as to the court or judge shall seem meet.

Costs.

(3) The order may direct that all or any part of the costs of the application, or of opposing the same, or in relation thereto, be paid by the person by whom the deposit was made, or by the person by whom the application is made, or by any person to whom notice of the application has been given or the court or judge may make such other order in respect of the costs of the applicant, and of the persons who have been notified, or who oppose the application, as may seem just. 1 Geo. V. c. 27, s. 14.

Delivery
under order.

15.—(1) Upon the delivery to the registrar of the order, or a duplicate thereof, within six months after the date thereof, and upon payment to him of the sum of fifty cents, he shall deliver to the person mentioned therein the documents therein directed to be given to him, taking his receipt, or the receipt of his authorized agent therefor.

(2) The registrar shall thereupon enter in the deposit index, opposite the entry of the document, the date of such delivery, and the name of the person to whom delivered, the court or judge by whom the order was made, and the date of the order, and shall file the order among the requisitions for deposit in the order of the date of its receipt. 1 Geo. V. c. 27, s. 15.

Registration
of order.

FORM 1.

REQUISITION.

To the Registrar of the Registry Division of

I (or we) hereby deposit with you, pursuant to *The Custody of Documents Act*, the following documents: —

Description of document.	Names of all parties.	Any other particulars or subject of certificate, affidavit, etc.	Land in this registry division to which documents relate.	Particulars of registration of registered instruments.			
				Registry division.	Date.	No.	Township, city, town, etc.

Dated

(in duplicate)

Signed in presence of me, to whom the depositor, and his residence and occupation are well known.

{ C. D.
 Residence, giving Lot, Concession
 or House No. and Street.
 (Occupation.).

A. B.

The documents above mentioned, with a duplicate of the above requisition, are this day received by me.

Dated

E. F.,
Registrar for

1 Geo. V. c. 27, Form 1.

FORM 2.

DEPOSIT INDEX.

Deposit No.	Description of document.	Parties.	Land in this registry division mentioned.	Any other particulars or subject of certificates, affidavits, etc.	Particulars of registration certificate endorsed.	Date of deposit.	By whom deposited.

1 Geo. V. c. 27, Form 2.

FORM 3

NOTICE OF DEPOSIT.

To the Registrar of the Registry Division of

The following documents, which appear to be registered in your registry office, have been deposited in this registry office under *The Custody of Documents Act*.

Deposit Index No.	Date of deposit.	Description of document.	Parties.	Particulars of registration in your registry division.		
				Township, city, town, etc.	Date of registration.	Registration No.
2146	8th Aug., 19	Mortgage.	John Smith to Wm. Jones.			

You are required to enter such deposit, and to acknowledge receipt hereof, under above Act. I enclose cents for your fees and cents for postage on acknowledgment.

Dated at

Registrar for

ACKNOWLEDGMENT TO BE PUT ON DUPLICATE NOTICE.

The duplicate of above notice of deposit of (*three*) documents received at the registry office for this day of , 19 , and entry of such deposit has been made in accordance with *The Custody of Documents Act*.

Registrar.

1 Geo. V. c. 27, Form 3.

CHAPTER 126.

An Act to simplify Titles and to facilitate the
Transfer of Land.

HIS MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Ontario,
enacts as follows:—

PRELIMINARY.

1. This Act may be cited as *The Land Titles Act*. 1 Geo. V. c. 28, s. 1. Short title.

2. This Act shall, subject to section 146, apply to the County Application of Act.
of York, including the City of Toronto; the County of Elgin,
including the City of St. Thomas; the County of Ontario; the
City of Ottawa and the County of Carleton and to Provi-
sional Judicial Districts only, and the Land Registries here-
tofore established for such counties and districts are hereby
continued. 1 Geo. V. c. 28, s. 2.

3. In this Act,

Interpreta-
tion.

(a) "Court" shall mean the Supreme Court.

Court.

(b) "General Rules" or "Rules" shall mean the Rules General Rules.
made in pursuance of this Act or of any Act repealed by it.

(c) "Inspector" shall mean Inspector of Land Titles Offices, Inspector.
and shall include a person acting as Inspector of Land Titles
Offices under the authority conferred by this Act.

(d) "Owner" shall mean owner in fee simple;

Owner.

(e) "Prescribed" shall mean prescribed by this Act or by Prescribed.
any general rules made in pursuance of this Act.

(f) "Proper Master of Titles" shall mean the Master of Proper Master of Titles.
Titles or Local Master in whose office the land affected or
intended to be affected by any proceeding, instrument or docu-
ment is or may be registered.

(g) "Registered" shall mean registered under this Act. Registered.

(h) "Sworn Valuator" shall mean a person appointed, with Sworn Valuator.
the approval of the Lieutenant-Governor in Council, to value
land under this Act. 1 Geo. V. c. 28, s. 3.

4. Any jurisdiction of the court under this Act may be Exercise of jurisdiction.
exercised by a judge of the court whether sitting in court or
in chambers. 1 Geo. V. c. 28, s. 4.

PART I.

ENTRY OF LAND ON REGISTER OF TITLE.

Land registry for County of York to be conducted by Master of Titles.
Imp. 38 & 39 V. c. 87, ss. 5, 106.

5.—(1) The Land Registry for the County of York shall be conducted by an officer to be called the Master of Titles, who shall be a barrister of not less than ten years' standing at the Bar of Ontario, and shall be appointed by the Lieutenant-Governor in Council by commission under the Great Seal. 1 Geo. V. c. 28, s. 5.

Deputy Master of Titles: appointment and duties of.

(2) The Lieutenant-Governor in Council may appoint a person, being a barrister or solicitor of not less than five years standing, to be the Deputy of the Master of Titles, and the person so appointed shall act under the supervision of the Master or in the absence of the Master, and when so acting shall have all the powers of the Master.

Powers on death or resignation of Master.

(3) In case of the death or resignation of the Master the Deputy may act as Master until his authority is revoked. 2 Geo. V. c. 24, s. 1.

Application for registration.

Imp. 38 & 39 V. c. 87, s. 5.

6.—(1) Any person entitled for his own benefit at law or in equity to an estate in fee simple in land, whether or not subject to incumbrances, or any person capable of disposing for his own benefit by way of sale of an estate in fee simple in land, whether or not subject to incumbrances, may apply to the proper Master of Titles to be registered under this Act, or to have registered in his stead any nominee as owner of such land, with an Absolute, Qualified or Possessory title, as the case may be.

Application by purchaser.
Imp. 38 & 39 V. c. 87, s. 5.

(2) Any person who has contracted to buy for his own benefit an estate in fee simple in land, whether or not subject to incumbrances, may also apply if the vendor consents to the application.

Application by Crown.

Imp. 38 & 39 V. c. 87, s. 65.

(3) The Attorney-General for Canada, or the Attorney-General of Ontario, may apply in like manner in respect to the title of the Crown to any land; and the practice and procedure upon the application shall be the same as in ordinary cases. 1 Geo. V. c. 28, s. 6.

Trustees and Mortgagees.

Trustees, etc., may sell by medium of registry, or may be themselves registered.

Imp. 38 & 39 V. c. 87, s. 68.

7.—(1) Any person holding land on trust for sale, and any trustee, mortgagee or other person having a power of selling land may authorize the purchaser to make an application to be registered as owner with any title with which an owner is authorized to be registered, and may consent to the performance of the contract being conditional on his being so registered; or any of such persons, except a mortgagee, may himself apply to be registered as such owner with the consent of the persons, if any, whose consent is required to the exercise by the applicant of his trust or power of sale.

(2) A mortgagee having a power of selling land may apply to have the mortgagor or other person owning the equity of redemption registered as owner with any such title. Application by a mortgagee with a power of sale.

(3) The amount of all costs, charges, and expenses properly incurred by such person, in or about the application, shall be ascertained and declared by the proper Master of Titles, and shall be deemed to be costs, charges, and expenses properly incurred by such person in the execution of his trust or in pursuance of his power; and he may retain or reimburse the same to himself out of any money coming to him under the trust or power, and he shall not be liable to any account in respect thereof. Costs, etc., thereof. Reimbursement. 1 Geo. V. c. 28, s. 7.

Part Owners.

8.—(1) Any two or more persons entitled concurrently or successively, or partly in one mode and partly in another, to such estates, rights or interests in land as together make up such an estate as would, if vested in one person, entitle him to be registered as owner of the land may, subject as in this Act mentioned with respect to the number of persons to be registered in respect of the same land, apply to the proper Master of Titles to be registered as joint owners in the same manner and with the same incidents, so far as circumstances admit, in and with which it is in this Act declared that an individual owner may be registered. Registration of part owners. Imp. 38 & 39 V. c. 87, s. 69.

(2) Where several persons are so registered as owners the entry may, if the parties so desire, define the estates, rights and interests, other than trust estates, rights and interests, to which the owners are respectively entitled, and such entry may be made either upon first registration or subsequently in case the estates, rights or interests so arise. Entry on registration of part owners.

(3) Persons entitled to several estates, as mentioned in subsection 1, or owners who are tenants in common or joint tenants, shall be entitled to take out one certificate in respect of the whole estate, or each person may, when the extent of his interest is defined, take out a certificate in respect of his own estate; but when a certificate for the whole is outstanding no separate certificate shall be issued till the outstanding certificate is returned and cancelled. 1 Geo. V. c. 28, s. 8. What certificate part owners may take out.

Absolute Titles.

9. Where an absolute title is required the applicant or his nominee shall not be registered as owner of the fee simple unless and until the title is approved by the proper Master of Titles. 1 Geo. V. c. 28, s. 9. Evidence where absolute title required. Imp. 38 & 39 V. c. 87, s. 6.

10. The first registration of a person as owner of land, in this Act referred to as first registered owner with an absolute title, shall vest in the person so registered an estate in fee simple in such land, together with all rights, privileges Estate of first registered owner with absolute title.

Imp. 38 &
39 V. c. 87,
s. 7.

and appurtenances belonging or appurtenant thereto, subject as follows:

- (a) To the incumbrances, if any, entered on the register;
- (b) To such liabilities, rights and interests, if any, as are declared for the purposes of this Act not to be incumbrances, unless the contrary is expressed on the register;
- (c) Where such first registered owner is not entitled for his own benefit to the land registered, then as between him and any persons claiming under him, to any unregistered estates, rights, interests or equities to which such persons may be entitled;

but free from all other estates and interests whatsoever, including estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. 1 Geo V. c. 28, s. 10.

Possessory Titles.

Evidence where possessory title required. Imp. 38 & 39 V. c. 87, s. 6.

11. Where a possessory title only is required the applicant or his nominee may be registered as owner of the fee simple on giving such evidence of title and serving such notices, if any, as may be prescribed. 1 Geo. V. c. 28, s. 11.

Estate of first registered owner with possessory title.

12. The registration of a person as first registered owner with a possessory title only shall not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of such first registered owner, and subsisting or capable of arising at the time of registration of such owner, but shall otherwise have the same effect as registration of a person with an absolute title. 1 Geo. V. c. 28, s. 12.

Imp. 38 & 39 V. c. 87, s. 8.

Qualified Titles.

A qualified title may be registered.

13.—(1) Where on the examination of the title it appears to the proper Master of Titles that it can be established only for a limited period, or subject to certain reservations, the Master, on the application of the party applying to be registered, may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date, or arising under a specified instrument, or otherwise particularly described in the register.

Imp. 38 & 39 V. c. 87, s. 9.

"Qualified title" defined.

(2) A title registered subject to such excepted estate, right or interest shall be called a qualified title.

Estate of owner registered with a qualified title.

(3) The registration of a person as first registered owner with a qualified title shall have the same effect as the registration of such person with an absolute title, save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right or interest appearing by the register to be excepted.

(4) Where the existence of any easement is proved the Master may, if he thinks fit, enter notice thereof on the register.
Notice of easement. Imp. 38 & 39 V. c. 87, s. 18, sub-s. d.

(5) Where title is shown to any easement appurtenant to the land being registered the same may be stated in the entry and certificate of ownership. 1 Geo. V. c. 28, s. 13.
Statement of appurtenant easement on certificate, etc.

Certificate of Ownership.

14. On the entry of the name of the first registered owner of freehold land on the register the proper Master of Titles shall, if required by the owner, deliver to him a Certificate in the prescribed form, in this Act called a Certificate of Ownership, which shall state whether the title of the owner therein mentioned is absolute, qualified or possessory. 1 Geo. V. c. 28, s. 14.
Certificate of ownership given on registration. Imp. 38 & 39 V. c. 87, s. 10.

15.—(1) A certificate by the proper Master of Titles of the first registration of an owner under this Act shall be registered in the registry division in which the land is situated, and thereafter *The Registry Act* shall cease to apply to such land.
Registry Act not to apply to land under this Act. Rev. Stat. c. 124.

(2) The certificate, besides describing the land, shall state the date of the first registration, the number of the parcel and the register in which the land is registered; and the Registrar shall in his Abstract Index enter the number of the parcel and the register as given in the certificate. 1 Geo. V. c. 28, s. 15.
Particulars to be stated in certificate for registry office.

PART II.

LEASEHOLD LAND.

16.—(1) A separate register of leasehold land shall be kept and any of the following persons:
Register of leasehold land.

(a) Any person who has contracted to buy for his own benefit leasehold land held under a lease for a life or lives, or determinable on a life or lives, or for a term of years of which at least 21 are unexpired, or in respect of which the lessee or his assigns is or are entitled to a renewal term or succession of terms amounting with the portion unexpired of the current term to at least 21 years, or to a renewal for a life or lives, whether or not subject to incumbrances;
Application for registration with or without a declaration of title of lessor to grant lease. Imp. 38 & 39 V. c. 87, s. 11.

(b) Any person entitled for his own benefit, at law or in equity, to leasehold land held under any such lease whether or not subject to incumbrances; and

- (c) Any person capable of disposing for his own benefit by way of sale of leasehold land held under any such lease whether or not subject to incumbrances;

may apply to the proper Master of Titles to be registered, or to have registered in his stead any nominee as owner of such leasehold land, with the addition, where the lease under which the land is held is derived immediately out of freehold land and the applicant is able to submit for examination the title of the lessor, of a declaration of the title of the lessor to grant the lease under which the land is held;

Proviso.

Provided that, in the case of leasehold land contracted to be bought, the vendor consents to the application.

Deposit of lease with the Master.
"The registered lease."

(2) Every applicant for registration of leasehold land shall deposit with the Master the lease in respect of which the application is made or, if such lease is proved to the satisfaction of the Master to be lost, a copy of such lease or of a counterpart thereof, verified to the satisfaction of the Master, and such lease or verified copy is in this Act referred to as the registered lease.

Where lease contains prohibition against alienation.

Where alienation permitted by license.

(3) Leasehold land held under a lease containing an absolute prohibition against alienation shall not be registered.

(4) Leasehold land held under a lease containing a prohibition against alienation, without the license of some other person, shall not be registered unless and until provision is made in the prescribed manner for preventing alienation without such license by entry in the register of a restriction to that effect or otherwise.

Sec. 7 to apply to leasehold land.

Evidence of title required on application.

Imp. 38 & 39 V. c. 87, s. 12.

(5) Section 7 shall apply to leasehold as well as to freehold land. 1 Geo. V. c. 28, s. 16.

17. An applicant or his nominee shall not be registered as owner of leasehold land unless and until the title to such land is approved by the proper Master of Titles; and if he applies to be registered as owner of leasehold land, with a declaration of the title of the lessor to grant the lease under which the land is held, shall not be registered with such declaration unless and until the lessor, after an examination of his title by the Master, is declared to have had an absolute or qualified title to grant the lease under which the land is held. 1 Geo. V. c. 28, s. 17.

Estate of first registered owner of leasehold land with a declaration of absolute title of lessor to grant lease.

18. The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had an absolute title to grant the lease under which the land is held, shall vest in such person the land comprised in the registered lease relating to such land for all the leasehold estate therein described with all implied or expressed rights, privileges and appurtenances attached to such estate, but subject

- (a) To all implied and express covenants, obligations and liabilities incident to such leasehold estate; Imp. 38 & 39 V. c. 87, s. 13.
- (b) To the incumbrances, if any, entered on the register;
- (c) Unless the contrary is expressed on the register to such liabilities, rights and interests as affect the leasehold estate and are by this Act declared not to be incumbrances in the case of registered freehold land; and
- (d) Where such first registered owner is not entitled for his own benefit to the land registered, then, as between himself and any person for whom he holds or claiming under him, to any unregistered estates, rights, interests or equities to which such person may be entitled;

But free from all other estates and interests whatsoever, including estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. 1 Geo. V. c. 28, s. 18.

19. The registration of a person as first registered owner of leasehold land, without a declaration of the title of the lessor, shall not affect or prejudice the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held; but, save as aforesaid, shall have the same effect as the registration of a person as first registered owner of leasehold land with a declaration that the lessor had an absolute title to grant the lease under which the land is held. 1 Geo. V. c. 28, s. 19. Estate of first registered owner of leasehold land without a declaration of title of lessor to grant lease. Imp. 38 & 39 V. c. 87, s. 14.

20.—(1) Where on the examination of the title of a lessor by the proper Master of Titles it appears to him that the title of such lessor to grant the lease under which the land is held can be established only for a limited period, or subject to certain reservations, the Master may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date or arising under a specified instrument, or otherwise particularly described in the register; and a title of a lessor subject to such excepted estate, right or interest shall be deemed a qualified title. Lessor may be declared to have a qualified title to grant lease. Imp. 38 & 39 V. c. 87, s. 15.

(2) The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had a qualified title to grant the lease under which the land is held, shall have the same effect as the registration of such person with a declaration that the lessor had an absolute title to grant the lease under which the land is held, save that registration with the declaration of a qualified title shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. 1 Geo. V. c. 28, s. 20. Effect of registration as first registered owner of leasehold land.

Office copy
of lease
given on
registration.

Imp. 38 &
39 V. c. 87,
s. 16.

21. On the entry of the name of the first registered owner of leasehold land on the register the proper Master of Titles shall, if required by the owner, deliver to him a copy of the registered lease, in this Act called an office copy, authenticated in the prescribed manner, and there shall be endorsed thereon a statement whether any declaration, absolute or qualified, as to the title of the lessor has been made, and any other particulars relating to such lease entered in the register. 1 Geo. IV. c. 28, s. 21.

PART III.

REGISTRATION, HOW EFFECTED.

22. The examination of a title shall be conducted in the prescribed manner, subject to the following provisions:

Regulations
as to exam-
ination of
title by
Master.

Imp. 38 &
39 V. c. 87,
s. 17.

- (a) Due notice shall be given where the giving of such notice is prescribed and sufficient opportunity shall be afforded to any person desirous of objecting to come in and state his objections to the proper Master of Titles;
- (b) The Master shall have jurisdiction to hear and determine any such objections, subject to an appeal to the Court in the prescribed manner and on the prescribed conditions;
- (c) If the Master, upon the examination of any title, is of opinion that it is open to objection, but is nevertheless a title the holding under which will not be disturbed, he may approve of it or may require the applicant to apply to the Court, upon a statement signed by the Master, for its sanction to the registration;
- (d) It shall not be necessary to produce any evidence which, by *The Vendors and Purchasers Act*, is dispensed with as between vendor and purchaser, or to produce or account for the originals of any registered deeds, documents or instruments unless the Master otherwise directs;
- (e) The Master may receive and act upon any evidence which is received in court on a question of title, or any evidence which the practice of conveyancers authorizes to be received on an investigation of a title out of court, or any other evidence, whether the same is or is not receivable or sufficient in point of strict law, or according to the practice of conveyancers, if the same satisfies him of the truth of the facts intended to be made out thereby;
- (f) The Master may refer to and act upon not only the evidence adduced before him in the proceeding

Rev. Stat.
c. 122.

in which such evidence is adduced but also any evidence adduced before him in any other proceeding wherein the facts to which such evidence relates were or are in question. 1 Geo. V. c. 28, s. 22.

23. The Lieutenant-Governor in Council may name one or more barristers to whom the Master of Titles may refer the examination of the title, in whole or in part, of any land in respect of which an application is made, and the Master may act upon the opinion of such referee. 1 Geo. V. c. 28, s. 23.

Employment of Counsel for examinations of titles.
Imperial L. T. Rules, 1903, Nos. 36 and 313.

24.—(1) All registered land, unless the contrary is expressed on the register, shall be subject to such of the following liabilities, rights and interests as for the time being may be subsisting in reference thereto, and such liabilities, rights and interests shall not be deemed incumbrances within the meaning of this Act:

Liability of registered land to easements and certain other rights.
Imp. 38 & 39 V. c. 87, s. 18.

- (a) Provincial taxes and succession duty and municipal taxes, charges, rates or assessments, and school or water rates;
- (b) Any right of way, water-course, and right of water, and other easements;
- (c) Any title or lien which, by possession or improvements, the owner or person interested in any adjoining land has acquired to or in respect of the registered land;
- (d) Any lease or agreement for a lease, for a period yet to run which does not exceed three years, where there is actual occupation under it;
- (e) Any right of the wife or husband of the person registered as owner to dower or curtesy, as the case may be, in case of surviving such owner;
- (f) A mechanics' lien where the time limited for the registration thereof has not expired;
- (g) Any right of expropriation, access or user conferred by Statute and any other right conferred upon or reserved to the Crown by any Statute.
- (h) Any public highway. 1 Geo. V. c. 28, s. 24 (1); 3-4 Geo. V. c. 18, s. 27 (1).

Land to be registered subject to taxes.

Easements.

Liens of adjoining owners.

Leases.

Dower or curtesy.

Mechanics' liens.

Statutory rights.

Highway.

(2) The description of the land in the entry of ownership shall not, as against adjoining owners, be conclusive as to the boundaries or extent thereof. 1 Geo. V. c. 28, s. 24 (7).

Description not conclusive against adjoining owners.

(3) Where a license under *The Crown Timber Act*, or any Statute for which that Act is substituted, has been or shall be granted, and the land is registered under this Act, the same shall be deemed to have been and to be subject to the

Effect of registration of land upon timber licenses.

Rev. Stat. c. 29, rights of the licensee or his assigns for the current license year under the license, and to the rights of His Majesty in the pine trees under *The Public Lands Act*, or any Statute for which that Act is substituted, without the fact of such land being so subject being expressed in the entry in the register, or in the certificate of ownership. 1 Geo. V. c. 28, s. 25.

Where applicant desires certificate free from (a)-(e) of s. 24 (1).

25.—(1) If the applicant desires the certificate to declare the title to be free from the first five of the particulars mentioned in subsection 1 of the next preceding section, or any of them, his application shall so state, and the investigation shall proceed accordingly.

Notice of application to have certificate free from highway.

(2) Where the applicant desires that the land shall be registered free from any public highway a notice so stating shall be published once a week for two successive weeks in a newspaper published in the municipality in which the land lies or where there is no such newspaper in one published in a neighbouring municipality, and the notice shall also be served upon the Attorney-General and upon the head or the Clerk of the council of the municipality in which the land lies.

Trial of right of highway in Supreme Court.

(3) If the Attorney-General or the Corporation of the municipality or any person objects to the land being so registered the Attorney-General or such corporation or person may in his objection require that the question of the existence of the highway be tried in the Supreme Court, and in that case the Master shall postpone his finding upon that part of the application until the question is finally determined, and shall give such directions as he may deem proper in order that an early adjudication thereon may be had.

Master may direct action or issue.

(4) Notwithstanding that the Attorney-General or the corporation or person objecting has not required the question to be tried in the Supreme Court the Master of his own motion or upon the application of either party, may direct that an action be brought or an issue be tried in the Supreme Court for the determination of the question on such terms and conditions as to costs and otherwise as he may deem just.

Registration pending decision and subsequent variation of entry.

(5) The Master pending the final decision of the question may register the applicant as owner, subject to any public highway and upon the final determination of the question if it is determined in favour of the applicant the entry and certificate of ownership shall be varied in accordance therewith. 1 Geo. V. c. 28, s. 24 (2-6).

Mortgages existing at First Registration.

Lands subject to mortgage at time of registration.

26.—(1) Where land is registered subject to mortgages existing thereon at the time of the first registration the mortgages shall be noted in the register in the same order as they

are registered in the registry office if such mortgages have been so registered, or the dates of the respective registrations thereof shall be stated, but this shall not be taken as an affirmation that such mortgages rank in the order in which they were registered or in the order in which they are noted.

(2) Abstracts of all instruments dealing with such mortgages shall thereafter be entered in the register, and the entry thereof shall be deemed the registration of the instrument, and the rights of the parties interested or claiming to be interested in any such mortgage so far as it affects land under this Act shall, subject to sections 10 to 13 and 42 to 45, be decided under the registry law as if the registrations in the Office of Land Titles had been made under *The Registry Act*. Abstracts of instruments dealing with same. Rev. Stat. c. 124.

1 Geo. V. c. 28, s. 26.

Determination of Incumbrances or Leases existing at First Registration.

27.—(1) Where upon the first registration of land notice of any incumbrance affecting such land has been entered on the register the proper Master of Titles, on proof to his satisfaction of the discharge of such incumbrance, shall note in the prescribed manner on the register, by cancelling the original entry or otherwise, the cessation of such incumbrance and thereupon the incumbrance shall cease. Complete or partial discharge of incumbrance. Imp. 38 & 39 V. c. 87, s. 19.

(2) On the requisition or certificate of a mortgagee whose mortgage was entered on the register on the first registration of the land, or the registered assignee thereof, or of the personal representative of such mortgagee or assignee, authorizing or certifying the discharge of the whole or any part of the land therefrom, or the discharge of the whole or any part of the money thereby secured, the Master may note on the register the discharge of such land from the mortgage or the discharge of such part of the money, and thereupon, as to the land or money discharged, the incumbrance shall cease. Note of discharge on requisition of mortgagee.

(3) The death of the person who signed the requisition or certificate shall not revoke or otherwise affect the same. Death of person after signing requisition.

1 Geo. V. c. 28, s. 27.

28. The proper Master of Titles, on proof to his satisfaction of the determination of any lease of registered land existing at the first registration, shall note in the prescribed manner on the register the determination of such lease. Determination of lease. Imp. 38 & 39 V. c. 87, s. 20.

V. c. 28, s. 28.

Adverse Possession as against Registered Owner.

29.—(1) A title to any land adverse to or in derogation of the title of the registered owner shall not be acquired by any length of possession. No title by adverse possession. Imp. 38 & 39 V. c. 87, s. 21.

Operation
of section.

(2) This section shall not prejudice, as against any person registered as first owner of land with a possessory title only, any adverse claim in respect of length of possession of any other person who was in possession of the land at the time when the registration of such first owner took place. 1 Geo. V. c. 28, s. 29.

PART IV.

TRANSFER AND CHARGE OF REGISTERED LAND.

Charge of Registered Land.

Creation of
charges.

30.—(1) Every registered owner may in the prescribed manner charge the land with the payment at an appointed time of any principal sum of money either with or without interest, or as security for any other purpose, and with or without a power of sale.

Imp. 38 & 39
V. c. 87,
s. 22.

Charge how
completed.

(2) The charge shall be completed by the proper Master of Titles entering on the register the person in whose favour the charge is made as the owner of the charge, stating the amount of the principal sum which the charge secures, with the rate of interest and the periods of payment, or the other purpose for which the charge is given.

Where charge
contains
power
of sale.

(3) Where the charge contains a power of sale that fact shall be stated, but the particulars need not be set out in the register, nor shall it be necessary to set forth incidental matters which may be expressly charged, such as costs of inspection, or of abortive attempts to sell and the like.

Effect of
charge
when
registered.

(4) The charge, when registered, shall confer upon the chargee a charge upon the interest of the chargor as appearing in the register subject to the incumbrances and qualifications to which such interest is subject, but free from any unregistered interests in the land.

Delivery of
certificate
to owner
of charge.

(5) The Master shall also, if required, deliver to the owner of the charge a certificate of charge in the prescribed form.

Rev. Stat.
c. 124.

(6) The provisions of section 74 of *The Registry Act* shall apply to the charge as if it was a registered mortgage. 1 Geo. V. c. 28, s. 30.

Implied
covenant
to pay
charges.

31.—(1) Where a registered charge is created there shall be implied on the part of the registered owner, at the time of the creation of the charge, his heirs, executors and administrators, unless there is an entry on the register negating the implication, covenants with the registered owner for the time being of the charge:

Imp. 38 & 39
V. c. 87,
s. 23.

(a) To pay the principal sum charged and interest, if any, thereon at the appointed time and rate; and all taxes, rates, charges, rents, statute labour or other impositions theretofore or thereafter

imposed or charged on the land, and that in case of default all payments made by the owner of the charge may be added to the principal sum and bear interest;

- (b) If the principal sum or any part thereof is unpaid at the appointed time to pay interest half yearly at the appointed rate on so much of the principal sum as for the time being remains unpaid.

(2) Where a charge, whether or not under seal, is expressed to be made in pursuance of *The Short Forms of Mortgages Act*, or refers thereto, and contains any form of words contained in clauses numbered 1, 2, 3, 7, 8, 12, 14, 15 or 16 of Column One of Schedule B to that Act, whether expressed in the first or third person, such words shall have the same meaning and effect as the words under the corresponding number in Column Two in that schedule; and the provisions of that Act shall apply to the charge. 1 Geo. V. c. 28, s. 31.

Provision where charge expressed to be made under Rev. Stat. c. 117.

32. Where a registered charge is created on any leasehold land there shall be implied on the part of the registered owner of such leasehold land, at the time of the creation of the charge, his heirs, executors, and administrators, unless there is an entry on the register negating the implication, covenants with the registered owner for the time being of the charge:

Implied covenant in case of leaseholds to pay rent, etc., and indemnify owner of charge.

- (a) That the registered owner of such leasehold land, at the time of the creation of the charge, his executors, administrators or assigns will pay, perform and observe the rent, covenants and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed and observed; and

- (b) Will keep the owner of the charge, his executors, administrators and assigns indemnified against all actions, suits, expenses and claims on account of the non-payment of such rent, or any part thereof, or the breach of such covenants or conditions or any of them. 1 Geo. V. c. 28, s. 32.

33. Subject to any entry to the contrary on the register the registered owner of a registered charge, for the purpose of obtaining satisfaction of any money due to him under the charge, at any time during the continuance of his charge, may enter upon the land charged, or any part thereof, or into the receipt of the rents and profits thereof, subject nevertheless to the right of any persons appearing on the register to be prior incumbrancers, and to the liability attached to a mortgagee in possession. 1 Geo. V. c. 28, s. 33.

Entry by owner of charge. Imp. 38 & 39 V. c. 87, s. 25.

34. Subject to any entry to the contrary on the register the registered owner of a registered charge may enforce it

Foreclosure by owner of charge.

Imp. 38 & 39
V. c. 87,
s. 26.

by foreclosure or sale in the same manner and under the same circumstances in and under which he might enforce the same if the land had been transferred to him by way of mortgage, subject to a proviso for redemption. 1 Geo. V. c. 28, s. 34.

Remedy of
owner of
charge with
a power of
sale.

Imp. 38 & 39
V. c. 87,
s. 27.

35. Subject to any entry to the contrary on the register the registered owner of a registered charge with a power of sale, in accordance with the terms of the power, may sell and transfer the interest in the land which is the subject of the charge, or any part thereof, in the same manner as if he were the registered owner of the land to the extent of such interest therein. 1 Geo. V. c. 28, s. 35.

Priority of
registered
charges.

Imp. 38 & 39
V. c. 87,
s. 28.

36. Subject to any entry to the contrary on the register registered charges on the same land shall as between themselves rank according to the order in which they are entered on the register, and not according to the order in which they are created. 1 Geo. V. c. 28, s. 36.

Discharge
of incum-
brance.

Imp. 38 & 39
V. c. 87,
s. 28.

37.—(1) The proper Master of Titles shall, on the requisition of the registered owner of any land and on due proof of the satisfaction of a charge thereon, or may, on the requisition of the registered owner of a charge or of his personal representative or on his certificate of the satisfaction thereof, note on the register in the prescribed manner, by cancelling the original entry or otherwise, the cessation of the charge, and thereupon the charge shall cease.

Note of
cessation
of other
incumbrances.

(2) The Master may in like manner and with the like effect note the cessation of any other incumbrance.

Partial
cessation
of charge.

(3) On the requisition or certificate of the registered owner of a charge, or of the personal representative of such owner authorizing or certifying the discharge of any part of the land therefrom or the discharge of any part of the money thereby secured, the Master may note on the register the discharge of such land from the charge or the discharge of such part of the money and thereupon as to the land or money discharged the charge shall cease.

Death of
person
certifying
to cessation
of charge.

(4) The death of the person who signed the requisition or certificate shall not revoke or otherwise affect the same. 1 Geo. V. c. 28, s. 37.

Transfers after Land is Brought Under this Act.

Transfer of
land.

38.—(1) Every registered owner may, in the prescribed manner, transfer the land or any part thereof.

Registering
transferee
as owner.

Imp. 38 & 39
V. c. 87,
s. 29.

(2) The transfer shall be completed by the proper Master of Titles entering on the register the transferee as owner of the land transferred, and until such entry is made the transferor shall be deemed to remain owner of the land.

(3) Upon completion of the registration of the transferee the Master shall, if required, deliver to him a certificate of ownership in the prescribed form.

Delivery to transferee of certificate of ownership.

(4) Where part only of the land is transferred the Master shall also, if required, deliver to the transferor a certificate of ownership containing a description of the land retained by him. 1 Geo. V. c. 28, s. 38.

Where part only is transferred.

39.—(1) Any person who is entitled to have a transfer or charge entered on the register shall have the right to require the holder of the certificate of ownership, if any is outstanding, to produce the certificate to the proper Master of Titles, or to deliver it to such person for production for the purpose of having all proper entries or alterations made thereon by the Master, or for cancellation when the certificate has become effete.

Right to compel production of certificate of ownership.

(2) A person entitled to have a cessation of a charge entered shall have the right to have an outstanding certificate of ownership of the charge produced in like manner in order that it may be cancelled. 1 Geo. V. c. 28, s. 39.

Certificate of ownership of a charge which has ceased.

40. Where, upon an application for the registration of a charge or of a transfer of any land or charge, the proper Master of Titles considers it expedient to require the production of the certificate of ownership, either for the purpose of identifying the person dealing with the land or charge or for cancellation when the same ought to be cancelled or for any other purpose, he may do so, and may decline to enter the charge or transfer on the register until the certificate has been produced, and if the certificate is not produced within such time as the Master limits he may return the transfer or charge. 1 Geo. V. c. 28, s. 40.

Master may require production of certificate of ownership.

41. Where registered land is transferred to trustees under *The Religious Institutions Act* the trustees shall be registered as owners in the usual manner and by their corporate name without setting out the purposes or trusts on which the land is held, but a note shall be made by the proper Master of Titles that the land is only to be transferred or charged in accordance with the provisions of that Act. 1 Geo. V. c. 28, s. 41.

Transfers to trustees under *Rev. Stat.* c. 286.

42. A transfer for valuable consideration of land registered with an absolute title, when registered, shall confer on the transferee on estate in fee simple in the land transferred, together with all rights, privileges and appurtenances belonging or appurtenant thereto, subject to:

Estate of transferee for valuable consideration of land with absolute title. *Imp. 38 & 39 V. c. 87, s. 30.*

(a) The incumbrances, if any, entered or noted on the register; and

(b) Such liabilities, rights and interests, if any, as are declared for the purposes of the Act not to be

incumbrances unless the contrary is expressed on the register;

and as to such rights, privileges and appurtenances, subject also to any qualification, limitation or incumbrance to which the same are expressed to be subject in the register, or where such rights, privileges and appurtenances are not registered, then subject to any qualification, limitation or incumbrance to which the same are subject at the time of the transfer; but free from all other estates and interests whatsoever, including estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. 1 Geo. V. c. 28, s. 42.

Estate of transferee for valuable consideration of land with qualified title.

Imp. 38 & 39
V. c. 87,
s. 31.

43. A transfer for valuable consideration of land registered with a qualified title, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with an absolute title, save that such transfer shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. 1 Geo. V. c. 28, s. 43.

Estate of transferee for valuable consideration of land with possessory title.

Imp. 38 & 39
V. c. 87,
s. 32.

44. A transfer for valuable consideration of land registered with a possessory title shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the first registered owner, and subsisting, or capable of arising, at the time of the registration of such owner; but otherwise, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with an absolute title. 1 Geo. V. c. 28, s. 44.

Estate of voluntary transferee of land.

Imp. 38 & 39
V. c. 87,
s. 33.

45. A transfer of registered land, made without valuable consideration, shall be subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same; but otherwise, when registered, in all respects, and in particular as respects any registered dealings on the part of the transferee, shall have the same effect as a transfer of the same land for valuable consideration. 1 Geo. V. c. 28, s. 45.

Claims for Dower.

Claim that land is free from dower.

46.—(1) Where it is claimed that registered land is free from dower on account of the land being held in trust, or for some reason other than the wife's release of her dower by an instrument which can be produced and registered, and evidence to that effect which appears satisfactory is produced before the proper Master of Titles, he may issue a notice requiring the wife to support her right if she claims to be entitled to dower in the land; and if she fails to do so the Master may enter on the register a memorandum that the land is free from dower, and such entry shall, unless reversed on appeal, be a bar to any claim by such wife; and no appeal

shall lie unless the wife claims her right of dower before the Master.

(2) This section shall also apply to the widow of a former owner. 1 Geo. V. c. 28, s. 46.

Dower of widow of former owner.

47. Where registered land is transferred subject to a charge, or where the registered owner of land which is subject to a charge subsequently marries, the wife of the transferee or owner shall have the same rights in respect of dower as she would have had if the legal estate had been transferred by an ordinary mortgage and no others. 1 Geo. V. c. 28, s. 47.

Dower in case of transfer of incumbered land.

Transfers of Leaseholds.

48.—(1) Every registered owner of leasehold land may, in the prescribed manner, transfer the whole of his estate in such land or in any part thereof.

Transfer of leasehold land.
Imp. 38 & 39
V. c. 87,
s. 34.

(2) The transfer shall be completed by the proper Master of Titles entering on the register the transferee as owner of the leasehold land transferred, but until such entry is made the transferor shall be deemed to remain owner.

Until registration transferor to be deemed owner.

(3) Upon completion of the registration of the transferee, if the transfer includes the whole of the land comprised in the registered lease relating to such land, the transferee shall be entitled to the office copy of the registered lease.

Upon registration transferee to be entitled to office copy of lease.

(4) If a part only is transferred the Master, if required according to any agreement that has been entered into between the transferor and transferee, shall deliver to the one the office copy of the registered lease and to the other a fresh office copy of such lease, each of such copies showing, by endorsement or otherwise, the parcels of which the person to whom such copy is delivered is the registered owner. 1 Geo. V. c. 28, s. 48.

Where part only transferred.

49. A transfer for valuable consideration of leasehold land registered with a declaration that the lessor had 'an absolute title to grant the lease under which the land is held, when registered, shall vest in the transferee the land transferred for all the leasehold estate described in the registered lease relating to such land and then unexpired, with all implied or expressed rights, privileges, and appurtenances attached to such estate, but subject to

Estate of transferee for valuable consideration of leasehold land with a declaration of absolute title of lessor.
Imp. 38 & 39
V. c. 87,
s. 35.

(a) All implied and express covenants, obligations, and liabilities incident to such estate;

(b) The incumbrances, if any, entered or noted on the register; and

(c) Such liabilities, rights and interests as affect the leasehold estate and are by this Act declared for the purposes of the Act not to be incumbrances

in the case of registered freehold land unless the contrary is expressed on the register;

but free from all other estates and interests whatsoever, including any estates and interests of His Majesty, which are within the legislative jurisdiction of Ontario. 1 Geo. V. c. 28, s. 49.

Estate of transferee for valuable consideration of leasehold land without a declaration of title of lessor.

Imp. 38 & 39
V. c. 87,
s. 37.

50. A transfer for valuable consideration of leasehold land, registered without a declaration of the title of the lessor, shall not affect the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held; but otherwise, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held. 1 Geo. V. c. 28, s. 50.

Estate of transferee for valuable consideration of leasehold land with a declaration of qualified title of lessor.

Imp. 38 & 39
V. c. 87,
s. 36.

51. A transfer for valuable consideration of leasehold land, registered with a declaration that the lessor had a qualified title to grant the lease under which the land is held, when registered, shall have the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, save that such transfer shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted from the effect of registration. 1 Geo. V. c. 28, s. 51.

Estate of voluntary transferee of leasehold land.

Imp. 38 & 39
V. c. 87,
s. 38.

52. A transfer of registered leasehold land made without valuable consideration shall be subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same; but otherwise, when registered, in all respects and in particular as respects any registered dealings on the part of the transferee, shall have the same effect as a transfer of the same land for valuable consideration. 1 Geo. V. c. 28, s. 52.

Implied covenants on transfer of leasehold estates.

Imp. 38 & 39
V. c. 87,
s. 39.

53. On the transfer of any registered leasehold land, unless there is an entry on the register negating such implication, there shall be implied

(a) On the part of the transferor a covenant with the transferee that, notwithstanding anything by such transferor done, omitted or knowingly suffered, the rents, covenants and conditions reserved and contained by and in the registered lease, and on the part of the lessee to be paid, performed, and observed, have been so paid, performed, and observed up to the date of the transfer; and

(b) On the part of the transferee a covenant with the transferor that the transferee, his executors, administrators or assigns will pay, perform, and

observe the rents, covenants and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed and observed, and will keep the transferor, his executors, administrators and assigns indemnified against all actions, suits, expenses and claims on account of the non-payment of the rent or any part thereof, or the breach of the covenants or conditions or any of them. 1 Geo. V. c. 28, s. 53.

Transfer of Charges.

54.—(1) The registered owner of a charge may, in the prescribed manner, transfer such charge to another person as owner.

Transfer of charges on register.
Imp. 38 & 39
V. c. 87,
s. 40.

(2) The transfer shall be completed by the proper Master of Titles entering on the register the transferee as owner of the charge transferred.

Transfer completed by entry on register.

(3) The transfer, when registered, shall confer upon the transferee the ownership of the charge free from any unregistered interests therein, and the transfer of part of the sum secured by a charge shall confer upon the transferee the ownership of such part free from any unregistered interests therein.

Effect of registration of transfer.

(4) Every transfer of a charge shall be subject to the state of account upon the charge between the chargor and the chargee.

As between chargor and chargee.

(5) The Master shall also, if required, deliver to the transferee a fresh certificate of charge.

Delivery of fresh certificate.

(6) The transferor shall be deemed to remain owner of such charge until the name of the transferee is entered on the register in respect thereof.

Until registration transferor to be deemed owner of charge.

(7) The registered owner of a charge may transfer a part of the sum secured by the charge, and the part so transferred may be given priority over the remaining part, or may be deferred or may continue to rank equally with it as may be stated in the transfer. 1 Geo. V. c. 28, s. 54.

Transfer of part of a charge.

Time of Registration.

55. The day, hour and minute of the receipt of each instrument and copy of writ shall be noted thereon, and for the purpose of priority between chargees, transferees and others the time of the receipt shall be deemed the time of registration. 1 Geo. V. c. 28, s. 55.

Priority.

Transmission of Land and Charges on Owner's Death.

Transmission
on death of
owner of
freehold land.

Imp. 38 & 39
V. c. 87,
s. 41.

56. On the death of the sole registered owner, or of the survivor of several joint registered owners, of any freehold land such person shall be registered as owner in the place of the deceased owner or owners as may, on the application of any person interested in such land, be appointed by the proper Master of Titles, regard being had to the rights of the several persons interested in the land, and in particular to the selection of any such persons as may for the time being appear to the Master to be entitled, according to law, to be so appointed, subject to an appeal to the Court in the prescribed manner by any person aggrieved by any order of the Master under this section. 1 Geo. V. c. 28, s. 56.

Transmission
on death of
owner of
leasehold
land or of
charge.

Imp. 38 & 39
V. c. 87,
s. 42.

57. On the death of the sole registered owner, or of the survivor of several joint registered owners, of any leasehold land or of any charge the executor or administrator of such sole deceased owner, or of the survivor of such joint owners, shall be entitled to be registered as owner in his place 1 Geo. V. c. 28, s. 57.

Transmission
on death of
one of
several
owners.

58. Where two or more persons have been entered as owners of any land or charge and one of them dies his personal representative may apply to be entered as owner jointly with the survivor or survivors. 1 Geo. V. c. 28, s. 58.

Nature of
title of
registered
fiduciary
owners.

Imp. 38 & 39
V. c. 87,
s. 46.

59. Any person registered in the place of a deceased owner shall hold the land or charge, in respect of which he is registered, upon the trusts and for the purposes to which the same is applicable by law, and subject to any unregistered estates, rights, interests, or equities subject to which the deceased owner held the same; but otherwise in all respects, and in particular as respects any registered dealings with such land or charge, he shall be in the same position as if he had taken such land or charge under a transfer for a valuable consideration. 1 Geo. V. c. 28, s. 59.

Evidence of
transmission
of registered
ownership.

Imp. 38 & 39
V. c. 87,
s. 47.

60. The fact of any person having become entitled to any land or charge in consequence of the death of any registered owner shall be proved in the prescribed manner. 1 Geo. V. c. 28, s. 60.

Entry of
heir or de-
visee with-
out reference
to debts of
estate.

Rev. Stat.
c. 119.

61. Where an heir or devisee applies to be entered as owner of any registered land which has vested in him under *The Devolution of Estates Act* the proper Master of Titles shall make such entry without reference to the liability of the land for debts, except under executions, copies of which have been duly lodged; and the liability under that Act of such land or any transferor thereof shall be determined as if such land had not been registered under this Act. 1 Geo. V. c. 28, s. 61.

Executions and Sale Thereunder.

62.—(1) The sheriff or other officer to whom the same is directed forthwith after the delivery to him of any execution or other writ, or renewal thereof, affecting registered land, upon written request of the party by whom such execution or other writ was sued out or renewed, or of his solicitor, but not otherwise, shall deliver or transmit by registered post to the proper Master of Titles a copy of the writ certified under his hand; and no registered land shall be bound by any such writ until such copy has been received by the Master; and after the receipt by him of the copy no transfer by the execution debtor shall be effectual, except subject to the rights of the execution creditor under the writ.

Notice of executions.

(2) The Master shall keep a book in the prescribed form in which shall be entered a record of all writs, copies of which are received by him from the sheriff or other officer.

Record of same.

(3) No sale or transfer under any such writ shall be valid as against a person purchasing for valuable consideration before such entry is made, notwithstanding that the purchaser may have had notice of the writ.

Transfer before entry void as against purchaser.

(4) Upon production to the Master of sufficient evidence of the satisfaction of any such writ he shall cause an entry to be made in the book to that effect, and on such entry the writ shall be deemed to be satisfied.

Entry of satisfaction of writ.

(5) Every writ and renewal of a writ shall be presumed to have been spent, and the delivery or transmission of a copy thereof shall cease to have effect at the expiration of the writ or renewal as appearing on the copy transmitted; but if there has been a sufficient commencement of the execution to enable it to be completed by the sale and conveyance of the land under the writ, and the same has not been completely executed, the sheriff or officer shall, or the execution creditor may, at any time within one month before the expiration of the writ or renewal as so appearing, file with the Master a certificate of the sheriff or officer stating that fact, and such certificate shall be noted at the entry of the writ in the book, and the writ shall continue in force for a further period of one year from the filing of the certificate when it shall cease to have effect unless another similar certificate is filed which shall operate in like manner.

When writ to be presumed to be spent.

(6) Where an execution or other writ is issued against the registered owner under a different name from that under which he is registered the writ shall have no effect under this Act, unless the person who sues out the writ, or his solicitor, gives a notice to the Master stating the name under which the execution debtor is registered, and otherwise in the form or to the effect prescribed, or unless a like notice is written upon the copy of the writ.

Notice to Master where writ issues against owner under a different name from that on the register.

Fee to
sheriff.

(7) The sheriff or other officer shall be entitled to a fee of fifty cents for each copy of writ or certificate transmitted by him. 1 Geo. V. c. 28, s. 62.

Provision in
case it is
claimed that
land is not
affected by
a writ appar-
ently affect-
ing same.

63. Where a transferor or transferee of land, or maker or owner of a charge, claims that a writ apparently affecting land does not affect the land or charge he shall produce such evidence thereof as the proper Master of Titles may consider necessary, and the Master may require all parties interested to be notified of the application to register freed from the writ, and may himself decide the question or may direct an issue to be tried or a case to be stated and may make such order as to costs as he deems just. 1 Geo. V. c. 28, s. 63.

Seizure
ineffectual
until
certificate by
sheriff.

64.—(1) The seizure under execution or other process of a mortgage or charge, or of leasehold land registered under this Act, shall not take effect until a certificate of the sheriff or other officer that he has taken such mortgage, charge or leasehold land under such process against the registered owner thereof is lodged with the proper Master of Titles.

Contents of
certificate.

(2) The certificate shall state the number of the parcel under which the land affected is registered and the name of the owner, and shall be noted by the Master in the register.

Application
of section.

Rev. Stat. c. 80.

(3) This section shall not apply where the proceedings prescribed by section 25 of *The Execution Act* have been taken with respect to a mortgage or charge. 1 Geo. V. c. 28, s. 64.

Sale under
execution of
registered
land.

65. Where any registered freehold or leasehold land is sold under execution or other process the proper Master of Titles, upon the production to him of the transfer of the same by the sheriff or other officer in the prescribed form, with proof of the due execution thereof, shall cause a notice to be mailed to the proper post-office address of the person whose interest has been sold; and after the expiration of two weeks from the mailing of the notice, and if no other person has become entitled meanwhile for want of entry of the writ or otherwise, the Master shall register the purchaser as owner, and shall, if required, issue to him a certificate of ownership in the prescribed form. 1 Geo. V. c. 28, s. 65.

Sale for Taxes.

Sales for
taxes.

66.—(1) Where land is sold for taxes the purchaser may at any time after the sale lodge a caution against the transfer of the land; and upon the completion of the time allowed by law for redemption, and upon the production of the transfer of the land in the prescribed form, with proof of the due execution thereof by the proper officer, the proper Master of Titles shall cause a notice to be mailed to the proper post-office address of the persons who appear upon the register to be interested in the land; and after the expiration of three months from the mailing of the notice shall register the pur-

chaser at the sale as owner of the land with an absolute title; and shall, if required, issue to him a certificate of ownership in the prescribed form, unless the registration is in the meantime stayed by order of the Court, and in that case the registration shall not be made, nor shall the certificate be issued, except in accordance with the order and direction of the Court.

(2) Where it is made to appear to the Master that the purchaser has so dealt with the land that a mechanic's lien has or probably has attached thereto subsequent to the sale, and a claim of lien has been registered against the land, the Master may register the purchaser's title as subject to the claim of lien. 1 Geo. V. c. 28, s. 66.

Where mechanics' lien has attached subsequent to the sale.

Cessation of Mechanics' Liens.

67. On its appearing to the satisfaction of the proper Master of Titles that a lien under *The Mechanics and Wage Earners Lien Act* has ceased to exist the Master may make an entry accordingly, or an entry cancelling the claim; and the land affected shall thereby be released from the claim. 1 Geo. V. c. 28, s. 67.

Cancellation of liens registered under Rev. Stat. c. 140.

PART V.

OTHER DEALINGS WITH REGISTERED LAND.

Registered owner only may make registered disposition.

68.—(1) No person other than the registered owner shall be entitled to transfer or charge registered freehold or leasehold land by a registered disposition.

Effect of unregistered dispositions. Imp. 38 & 39 V. c. 87, s. 49.

(2) Subject to the maintenance of the estate and right of such owner any person having a sufficient estate or interest in the land may create estates, rights, interests and equities in the same manner as he might do if the land were not registered.

Unregistered estates, etc.

(3) Any person entitled to or interested in any unregistered estates, rights, interests or equities in registered land may protect the same from being impaired by any act of the registered owner by entering on the register such notices, cautions, inhibitions or other restrictions as are authorized by this Act.

How protected.

(4) No person other than the registered owner thereof shall be entitled to transfer a registered charge by a registered disposition; but, subject to the maintenance of the right of such owner, unregistered interests in a registered charge may be created in the same manner and with the same incidents, so far as the difference of the subject matter admits, in and with which unregistered estates and interests may be created in registered land. 1 Geo. V. c. 28, s. 68.

Who may transfer a registered charge.

Unregistered interests in a registered charge.

Right to Registration.

Right of transferees, and chargees, to registration.

69.—(1) Every transfer or charge signed by a registered owner, or others claiming by transfer through or under him, purporting to transfer or charge freehold or leasehold land, or an interest therein, capable of being registered, or purporting to transfer a charge, shall, until cut out by a conflicting registration, confer upon the person intended to take under such transfer or charge a right to be registered as the owner of such land or charge, and where a person applies to be registered under this section the proper Master of Titles may either forthwith, or after requiring such notices to be given as he deems expedient, register such applicant as owner, subject to such incumbrances, if any, as the condition of the title requires, notwithstanding that the transfer or charge has been executed or bears date prior to the entry of such transferor or chargor as the owner of the land or charge.

Application of devisees, etc., for registration.

(2) Any person claiming to be entitled to freehold or leasehold land, or to an interest therein, capable of being registered, or to a charge as devisee, heir, executor or administrator of a person who might have been registered under subsection 1, or any person claiming through or under such devisee, heir, executor or administrator may apply to be registered as owner of such land, interest or charge, and, if no conflicting registration has been made, may be so registered subject to the provisions of this section.

Mode of entry.

(3) On registering the applicant the Master shall, so far as practicable, enter on the register short particulars of every instrument or other title under which the right is conferred, as if such instrument had been duly presented for registration, or application for entry of transmission had been made in the proper order of time, and, as a preliminary step to the registration of the applicant, may enter any intermediate transferee, heir, executor or administrator as registered owner where that method is more convenient.

All persons entitled must apply.

(4) No application by a person claiming through or under a deceased person shall be allowed unless all the persons entitled to the whole of the estate of the deceased in the land are to be entered as owners.

Entry of persons taking by transmission from unregistered owner.

(5) The Master may in like manner enter as owner of freehold or leasehold land or of a charge any person who is entitled to such land or charge through the death of the owner, although the deceased had not been registered as owner, or any person who is entitled by virtue of the exercise of any power conferred by a statute, will, deed, or other instrument, whether the person so entitled claims directly from the deceased or directly under the power, or through any other person entitled by virtue of the death or power or through a succession of transfers or transmissions. 1 Geo. V. c. 28, s. 69.

(6) Where under an Order of Court any freehold or leasehold land or a charge is vested in any person the Master shall, on due proof of the order, make such entries in the Register as are necessary to give effect thereto, but if any person whose estate is affected by the Order is not shown by the Order to be a party to the cause or matter in which the Order was made the applicant shall furnish such evidence as is requisite to show that he is bound thereby.

Registration under vesting order.

(7) Where any street, road or lane laid out on a plan registered in a Land Titles Office has become a public highway, and has thereby become vested in a municipal corporation, the corporation may apply to the proper Master to be entered as the owner thereof.

Entry on register of Municipal Corporation as owner of streets laid out on plan.

(8) Where a highway or part of it has been closed by the action of a municipal council, and such highway or part of it has been transferred by the municipal corporation without the corporation having been entered as owner of it, the transferee may apply to be entered as owner of the highway or part of it transferred to him, and upon due proof of the facts the Master may enter such transferee as owner.

Entry as owner of transferee from a Municipal Corporation of closed-up street.

3-4 Geo. V. c. 18, s. 27 (2).

Notice of Lease.

70.—(1) Any lessee or other person entitled to or interested in a lease or agreement for a lease of registered land where the term is for a life or lives, or is determinable on a life or lives, or where the period of the lease or agreement yet to run is three years or upwards, or where the occupation is not in accordance with such lease or agreement, may apply to the proper Master of Titles to register notice of such lease or agreement in the prescribed manner.

Lessee may apply for registration of notice of lease.

Imp. 38 & 39 V. c. 87, s. 50.

(2) Where the lease is by the registered owner of the land the Master may without notice to him enter on the register such notice thereof as he deems necessary.

Manner of registering.

Imp. 38 & 39 V. c. 87, s. 51.

(3) Where the lease is not by the registered owner but his title appears to be subject thereto, or in the case of an agreement for a lease, the Master, upon notice to such owner, may enter notice of the lease or agreement on the register.

Entering on register.

(4) The applicant shall deliver to the Master the original lease or agreement or a copy thereof; and if the application is granted the Master shall make a note on the register identifying the lease or agreement or copy so deposited, and the lease or agreement or copy so deposited shall be deemed to be the instrument of which notice is given.

How to be effected.

(5) If the registered owner concurs in a registration under subsection 2 or subsection 3 notice may be entered in such manner as may be agreed upon.

Where registered owner concurs.

(6) When so registered every registered owner of the land and every person deriving title through him, excepting

Effect of such registrations.

owners of incumbrances registered prior to the registration of such notice, shall be deemed to be affected with notice of the lease or agreement as being an incumbrance on the land in respect of which the notice is entered.

Where
lease or
agreement is
determined.

(7) Where notice of such lease or agreement has been registered the Master, on proof to his satisfaction of the determination of the lease or agreement, shall in the prescribed manner note the determination on the register.

Transferee or
chargee of
lease or
agreement
may apply
for registra-
tion of
notice.
Priority of
notices.

(8) Where a notice of a lease or of an agreement for a lease has been registered under this section, a transferee or a chargee of the lease or agreement may apply to have a notice of his transfer or charge entered on the register.

(9) Unless the transferee or chargee has actual notice of a prior transfer or charge a transfer or charge in respect of which a notice has been entered shall take priority of one of which notice has not been entered. 1 Geo. V. c. 28, s. 70.

Notice of Estates in Dower or by the Curtesy.

Registration
of notices of
estates in
dower or by
the curtesy.

Imp. 38 & 39
V. c. 87,
s. 52.

71. Any person entitled to an estate in dower or by the curtesy in any registered land may apply in the prescribed manner to the proper Master of Titles to register notice of such estate; and the Master, if satisfied of the title of such person to such estate, shall register notice of the same accordingly in the prescribed form; and when so registered such estate shall be an incumbrance appearing on the register and shall be dealt with accordingly. 1 Geo. V. c. 28, s. 71.

Caution against Registered Dealings.

Caution
against regis-
tered deal-
ings, how to
be lodged.

Imp. 38 & 39
V. c. 87,
s. 53.

72.—(1) Any person interested in any way in any land or charge registered in the name of any other person may lodge a caution with the proper Master of Titles to the effect that no dealings with such land or charge be had on the part of the registered owner or other named person who is shown to have an interest in the land until notice has been served upon the cautioner.

Affidavit in
support.

(2) The caution shall be supported by an affidavit made by the cautioner or his agent or solicitor in the prescribed form and containing the prescribed particulars.

No caution
to be lodged
in respect of
an estate in
dower, etc.,
noted on
register.

(3) A person interested under a lease, or agreement for a lease, of which notice has been entered on the register, or a person entitled to an estate in dower, or by the curtesy, of which notice has been entered on the register, shall not be entitled to lodge a caution in respect of such lease or agreement or estate in dower or by the curtesy.

Renewal of
certain
cautions.

(4) Every caution founded upon an execution or upon an allegation that a transfer, charge or other dealing is fraudu-

lent shall be renewed before the expiration of five years from the date of lodging the same, otherwise it shall cease to have effect. 1 Geo. V. c. 28, s. 72 (*part*).

73.—(1) After any such caution has been lodged the pro-
 per Master of Titles shall not, without the consent of the
 cautioner, register any dealing with the land or charge until
 after notice to the cautioner warning him that his caution
 will cease to have any effect after the expiration of the pre-
 scribed number of days next ensuing the date at which the
 notice is served.

Cautioner
 entitled to
 notice of pro-
 posed regis-
 tered deal-
 ings.

Imp. 38 & 39
 V. c. 87,
 s. 54.

(2) After the expiration of such time the Master shall
 enter a cessation of the caution unless good cause for its con-
 tinuance is shown.

Entering
 cessation of
 caution.

(3) Upon the caution so ceasing the land or charge shall
 be dealt with in the same manner as if no caution had been
 lodged.

Effect of
 cessation.

(4) A notice to a cautioner shall not be required where
 the dealing proposed to be registered is under the authority
 of a judgment or order of court in a suit or proceeding to
 which the cautioner is a party, or where such dealing is under
 a power of sale contained in a charge or mortgage which is
 prior to the title under which the cautioner claims, and the
 cautioner has been served with a notice of the proposed exer-
 cise of the power of sale, and the caution is not in respect of
 the exercise of the power of sale, or where the dealing is
 of such a nature that it cannot detrimentally affect the inter-
 est of the cautioner as claimed in the affidavit filed with his
 caution.

When notice
 of proposed
 registered
 dealings
 need not be
 given to
 cautioner.

(5) The Master, upon receiving the consent of the cautioner
 to the registration of a dealing, may discharge the caution
 unless the consent provides for its continuance, or he may dis-
 charge the caution as to the land or charge to which the deal-
 ing applies, but he shall not do so where from the nature of
 the dealing he is of opinion that the continuance of the cau-
 tion is contemplated. 1 Geo. V. c. 28, s. 73.

How Master
 may act.

74.—(1) Where the registered owner of any freehold or
 leasehold land has executed a transfer or a charge thereof,
 but claims that on account of special circumstances shown by
 affidavit the transferee or chargee should not be registered
 without notice to the registered owner, the proper Master of
 Titles may permit the registration of a caution by the regis-
 tered owner.

Registered
 owner object-
 ing to the
 registration
 of his trans-
 feree.

(2) The registration of such caution shall stay the regis-
 tration of the transfer until such notice has been served on
 the cautioner in accordance with the provisions of section 73.
 1 Geo. V. c. 28, s. 74.

Registration of
 caution to stay
 registration of
 transfer in the
 meantime.

Registered
dealings de-
layed on se-
curity being
given.

Imp. 38 & 39
V. c. 87,
s. 55.

75. If before the expiration of the prescribed period the cautioner or some person on his behalf appears before the proper Master of Titles, and within such period, or such additional period as the Master may allow, gives sufficient security to indemnify every person against any damage that may be sustained by reason of any dealing with the land or charge being delayed, the Master may delay registering any dealing with the land or charge for such further period as he deems just, or may instead of taking the security register such dealing subject to the caution on any condition which he thinks fit to impose, as to security or otherwise, or may make such other order as he deems just. 1 Geo. V. c. 28, s. 75.

Entry of
second
caution.

76. A second caution by the same cautioner, or by any other person in respect of the same matter, shall not be lodged, or if lodged shall not be entered or have any effect without the special permission of the proper Master of Titles, which may be given either upon terms or without terms as he may think proper. 1 Geo. V. c. 28, s. 76.

Sale of Standing Timber.

Sale of
standing
timber.

77. Where timber standing upon registered land is sold under an agreement in writing the purchaser, instead of entering a caution, may deposit the agreement with the proper Master of Titles, and the Master, upon proof of the due execution thereof by the owner, shall register the same as an incumbrance upon the land by entering a memorandum upon the register referring to the instrument and giving shortly the effect thereof. 1 Geo. V. c. 28, s. 77.

Inhibition against Registered Dealings.

Power of
court or mas-
ter to inhibit
registered
dealings.

Imp. 38 & 39
V. c. 87,
s. 57.

78.—(1) The Court or the proper Master of Titles, upon the application of any person interested, made in the prescribed manner in relation to any registered land or charge, after directing such inquiries, if any, to be made and notices to be given, and after hearing such persons as the Court or Master deems expedient, may issue an order or make an entry inhibiting for a time, or until the occurrence of an event to be named in such order or entry, or generally until further order or entry, any dealing with registered land or with a registered charge.

Imposition
of terms;
discharge of
order, etc.

(2) The Court or the Master may make an order or an entry and may impose any terms or conditions which may be deemed just, and may discharge the order or cancel the entry, with or without costs, and generally act in the premises in such manner as the justice of the case requires. 1 Geo. V. c. 28, s. 78.

Power of Registered Owner to Impose Restrictions.

79.—(1) Where the registered owner of freehold or leasehold land or of a charge desires to place restrictions on transferring or charging the land or charge he may apply to the proper Master of Titles to make an entry on the register that no transfer shall be made or charge created unless the following things, or such of them as the owner may determine, are done; that is to say—

- (a) Unless notice of any application for a transfer or for the creation of a charge is transmitted by registered post to such address as he may specify to the Master;
- (b) Unless the consent of some person or persons, to be named by the owner, is given to the transfer or the creation of a charge; or
- (c) Unless some other matter or thing is done as may be required by the applicant and approved by the Master.

(2) If the Master is satisfied of the right of the applicant to give such directions he shall make a note of them on the register, and no transfer shall be made or charge created except in conformity therewith.

(3) The Master shall not be required to enter any direction, except upon such terms as to payment of the fees and otherwise as may be prescribed, or to enter any restriction that he may deem unreasonable or calculated to cause inconvenience.

(4) Any such direction may at any time be withdrawn or modified at the instance of all the persons for the time being appearing by the register to be interested in such direction, and shall also be subject to be set aside by the Court. 1 Geo. V. c. 28, s. 79.

PART VI.

SUPPLEMENTAL PROVISIONS.

Notice of Registered Instruments.

80. No person other than the parties thereto shall be deemed to have any notice of the contents of any instruments other than those mentioned in the existing register of title of the parcel of land or which have been duly entered in the books of the office kept for the entry of instruments received or are in course of entry. 1 Geo. V. c. 28, s. 80.

Caution Against Entry of Land on Register.

Caution
against regis-
tration of
land.

Imp. 38 & 39
V. c. 87,
s. 60.

81.—(1) Any person having or claiming such an interest in any unregistered land as entitles him to object to any disposition thereof being made without his consent may lodge a caution with the proper Master of Titles to the effect that the cautioner is entitled to notice in the prescribed form, and to be served in the prescribed manner, of any application that may be made for the registration of such land.

Renewal of,
every five
years.

(2) Every caution under this section shall be renewed before the expiration of five years from the date of lodging the same otherwise it shall cease to have effect.

Unpatented
land,

(3) No caution registered under this section in respect of any unpatented land shall be of any validity unless the description contained therein specifies the land in accordance with the description subsequently contained in the patent, or describes the same in such manner that the Master may know that the description in the caution is intended to affect the land described in the patent. 1 Geo. V. c. 28, s. 81.

Cautions as to Actions Pending.

Lis
pendens
not to be
registered.

82. A certificate of *lis pendens* affecting land shall not be registered, but any party to an action, or his solicitor, or any person claiming to be interested in the action, may lodge a caution subject to the same conditions as in other cases. 1 Geo. V. c. 28, s. 82.

General Provisions as to Cautions.

Cautioner
entitled to
notice of
proposed reg-
istration of
land.

Imp. 38 & 39
V. c. 87,
s. 62.

83. After a caution has been lodged in respect of any unregistered land, and while the same is in force, registration shall not be made of such land until notice has been served on the cautioner to appear and oppose such registration, and until the prescribed time has elapsed after the date of the service of such notice, or the cautioner has appeared whichever may first happen. 1 Geo. V. c. 28, s. 83.

Caution to be
supported
by affidavit.

Imp. 38 & 39
V. c. 87,
s. 61.

84. Every caution shall be supported by an affidavit in the prescribed form stating the nature of the interest of the cautioner, the land to be affected by the caution and such other matters as may be prescribed. 1 Geo. V. c. 28, s. 84.

Caution Wrongfully Lodged.

Compensa-
tion for im-
proper lodg-
ing of cau-
tion.
Imp. 38 & 39
V. c. 87,
s. 63.

85. Any person who lodges a caution without reasonable cause shall be liable to make to any person who may sustain damage by the lodging of such caution such compensation as may be just; and such compensation shall be deemed to be a debt due from the person who has lodged the caution to the person who has sustained damage.

86. A caution shall not prejudice the claim or title of any person, and shall have no effect except as in this Act provided. 1 Geo. V. c. 28, s. 86.

Effect of caution.
Imp. 38 & 39
V. c. 87,
s. 64.

Costs.

87.—(1) Any applicant under this Act shall be liable *prima facie* to pay all costs, charges and expenses incurred by or in consequence of his application, except where parties whose rights are sufficiently secured without their appearance object, or where any costs, charges or expenses are incurred unnecessarily or improperly.

Payment of costs.
Imp. 38 & 39
V. c. 87,
s. 73.

(2) The proper Master of Titles may order costs, either as between party and party or as between solicitor and client, to be paid by or to any person, party to any proceeding under this Act, and may give directions as to the fund out of which any costs shall be paid, regard being had to the provisions of subsection 1.

Scale of costs.

(3) Any person aggrieved by an order of the Master made under this section may appeal in the prescribed manner to the Court, which may annul or, with or without modification, confirm the order of the Master.

Appeal from Master's order.

(4) If any person disobeys any order of the Master made under this section the Master may certify such disobedience to the Court, and thereupon, subject to such right of appeal, the order may be enforced in the like manner and by the like proceedings as if it were an order of the Court. 1 Geo. V. c. 28, s. 87.

Enforcement of order.

Doubtful Questions of Law or Fact.

88.—(1) Where upon the examination of a title or upon an application with respect to registered land the proper Master of Titles entertains a doubt as to any matter of law he may state a case for the opinion of the Court and may name the parties to it; and where he entertains a doubt as to any matter of fact he may direct an issue to be tried for the purpose of determining such fact.

Master may state a case for opinion of court, or direct issue.

Imp. 38 & 39
V. c. 87,
s. 74.

(2) The practice and procedure on and incidental to a case stated or on an issue directed under this section and the right to appeal from the judgment or other determination thereof shall be the same as on a special case or on an issue directed in an action.

Practice.

(3) The powers conferred by this section shall not be exercised by a local Master of Titles except with the approval of the Inspector. 1 Geo. V. c. 28, s. 88.

Exercise of powers.

89.—(1) Where any infant, idiot, lunatic, person of unsound mind, person absent from Canada, or person yet unborn is interested in the land in respect of the title to which

Intervention of Court in case of incapacitated persons.

Imp. 38 & 39
V. c. 87,
s. 76.

a question arises as aforesaid, any person interested in the land may apply to the Court for a direction that the opinion of the Court to which the case is stated under this Act shall be conclusively binding on such infant, idiot, lunatic, person of unsound mind, person absent from Canada, or unborn person.

Idem.

(2) The Court shall hear the allegations of all parties appearing before it, and may disapprove altogether or may approve, either with or without modification, of the directions of the proper Master of Titles in respect to any case stated as to the title of land.

Power to
appoint
guardian, etc.

(3) The Court may also, if necessary, appoint a guardian or other person to appear on behalf of any infant, idiot, lunatic, person of unsound mind, person absent from Canada, or unborn person.

Power of
Court to
bind interests
of incapacitated persons.

(4) The Court, if satisfied that the interests of the person under disability, absent, or unborn will be sufficiently represented in any case, shall make an order declaring that all persons, with the exceptions, if any, named in the order, are to be conclusively bound; and thereupon all persons, with such exceptions, shall be conclusively bound by the decision of the Court. 1 Geo. V. c. 28, s. 89.

Imp. 38 & 39
V. c. 87,
s. 77.

*Certificates of Ownership. Office Copies of Leases, and
Certificates of Charge.*

Loss of
land certifi-
cate, or certi-
ficate of
charge, or
office copy of
lease.
Imp. 38 & 39
V. c. 87,
s. 78.

90.—(1) If any certificate of ownership or office copy of a registered lease or certificate of charge is lost, mislaid, or destroyed the proper Master of Titles, upon being satisfied of that fact, may grant a new certificate of ownership or office copy of certificate of charge in place of the former one. 1 Geo. V. c. 28, s. 90.

Renewal of
land certifi-
cate, or certi-
ficate of
charge, of
office copy of
lease.
Imp. 38 & 39
V. c. 87,
s. 79.

(2) The proper Master of Titles, upon the delivery up to him of a certificate of ownership or of an office copy of a registered lease or of a certificate of charge, may grant a new certificate of ownership or office copy of lease or certificate of charge in place of the one delivered up. 1 Geo. V. c. 28, s. 91.

Land certifi-
cate, certifi-
cate of
charge, and
office copy of
lease to be
evidence.
Imp. 38 & 39
V. c. 87,
s. 80.

91. A certificate of ownership or certificate of charge shall be *prima facie* evidence of the matters therein contained, and the office copy of a registered lease shall be evidence of the contents of the registered lease. 1 Geo. V. c. 28, s. 92.

Effect of de-
posit of land
certificate, or
of office copy
of lease.

92. Subject to any registered estates, charges, or rights, the deposit of the certificate of ownership in the case of freehold land, and of the office copy of the registered lease in the case of leasehold land for the purpose of creating a lien on the land to which such certificate or lease relates, shall be deemed equivalent to a deposit of the title deeds of the land. 1 Geo. V. c. 28, s. 93.

Imp. 38 & 39
V. c. 87,
s. 81.

Incorporeal Hereditaments, Mining Rights and Easements.

93.—(1) The proper Master of Titles may register the owner of any incorporeal hereditament of freehold tenure, enjoyed in gross, also the owner of any mines or minerals where the ownership of the same has been severed from the ownership of the land, in the same manner and with the same incidents in and with which he is by this Act empowered to register the owner of land, or as near thereto as circumstances admit.

Registry of special hereditaments.
Imp. 38 & 39
V. c. 87,
s. 82.

(2) Where an easement in or over unregistered land is granted as appurtenant to registered land the Master, after such examination as he deems necessary, may enter such easement in the register of the dominant land with a declaration that the title thereto is absolute, qualified or possessory, or otherwise as the case may require, and shall cause to be registered in the proper registry division a certificate of such entry.

Registration of easements when dominant land registered.

(3) Where an easement in or over registered land is granted as appurtenant to unregistered land the Master may issue a certificate setting out such easement and the land to which it is appurtenant, which may be registered in the registry division in which the land is situate, and he shall note on the register that such certificate has been issued. 1 Geo. V. c. 28, s. 94.

Certificate of easement when dominant land unregistered.

94.—(1) In the case of lands registered under this Act no title to any ores, mines or minerals shall be held to have passed or shall pass under section 3 of *The Mines Act of 1892*, or under section 3 of *The Act respecting Mines*, being chapter 36 of *The Revised Statutes of Ontario, 1897*, or under section 3 of *The Act to amend the Mines Act*, passed in the 63rd year of the reign of Her late Majesty Queen Victoria, until the registered owner shall have had himself entered as owner of such ores, mines or minerals, or until his transferee or chargee shall have procured the Master to make the entries authorized by subsection 3.

Title to minerals not to pass until owner entered on land register.
55 V. c. 9.
63 Vict. c. 13.

(2) In case of lands registered under this Act no title to any ores, mines or minerals shall be held to have passed or shall pass under Chapters 16, 17 and 18 of the Acts passed in the 8th year of the reign of His late Majesty King Edward VII., or sections 53 and 54 of *The Public Lands Act*, until the registered owner shall have furnished to the proper Master of Titles a certificate of the Minister of Lands, Forests and Mines or of a Deputy Minister, that the same were at the time of the passing of the said Acts the property of the Crown and had not been staked out, recorded, leased or granted under *The Mining Act of Ontario* passed in the said year of His said Majesty's reign, or under any statutory regulation previously in force, and until such owner shall have had himself registered as owner of the mines, ores or minerals or his transferee or chargee shall have procured

Certificate of Minister or Deputy when required.

Rev. Stat. c. 28.

8 Edw. VII.
c. 21.

the Master to make the entries authorized by the next subsection.

Transfers or charges heretofore made.

(3) If any registered owner of lands shall have assumed to transfer or charge any mines, ores or minerals reserved by the Crown and coming within the said Acts the transferee or chargee may furnish to the said Master the certificate of the Minister or Deputy Minister as above provided, and shall have the right to apply to be registered as such transferee or chargee, and the said Master may make all proper entries in order to define the interests of the persons then appearing to be entitled to the mines, ores or minerals or any interest therein.

Claims against Assurance Fund.

(4) No claim shall be sustained against the Assurance Fund in respect of any right arising under any of the said Acts by reason of any dealing with any ores, mines or minerals which were prior to the passing of such Act subject to the reservation thereof to the Crown. 2 Geo. V. c. 10, s. 1.

General Provisions.

Trusts not to be entered.
Imp. 38 & 39
V. c. 87,
s. 83, part.

95.—(1) There shall not be entered on the register or be receivable any notice of any trust, express, implied, or constructive.

Description of owner as a trustee.

(2) Describing the owner of any freehold or leasehold land, or of any charge as a trustee, whether the beneficiary or object of the trust is or is not mentioned, shall not be deemed a notice of a trust within the meaning of this section, nor shall such description impose upon any person dealing with such owner the duty of making any enquiry as to the power of the owner in respect of the land or charge or the money secured by the charge, or otherwise; but, subject to the registration of any caution or inhibition, such owner may deal with the land or charge as if such description had not been inserted.

Owners described as trustees to be joint tenants.

(3) Where two or more owners are described as trustees the property shall be held to be vested in them as joint tenants unless the contrary is expressly stated. 1 Geo. V. c. 28, s. 95 (1-3).

Saving as charge by a company as security.

(4) Nothing in this section shall prevent the registration of a charge given by an incorporated company for the purpose of securing bonds or debentures of the company, but the registration of any such charge shall not be deemed a guarantee that the proceedings necessary to render the same valid have been duly taken. 1 Geo. V. c. 28, s. 95 (4); 3-4 Geo. V. c. 18, s. 27 (4).

Undivided shares.
Imp. 38 & 39
V. c. 87,
s. 83, part.

96.—(1) No person shall be registered as owner of any undivided share in any freehold or leasehold land or of any charge apart from the other share or shares.

(2) The share of each owner may be stated, and where the extent of his interest appears on the register, or by the statement of his co-owners, he may transfer or charge his share, or he may without such statement transfer his share to his co-owners. 1 Geo. V. c. 28, s. 96. Rights of owner in such case.

97.—(1) Where the number of persons who may be registered as the owners of the same freehold or leasehold land or charge is limited by a Rule, a number of persons exceeding the number prescribed shall not be registered as owners of such land or charge; and if the number of persons showing title exceeds the prescribed number, such of them not exceeding the prescribed number, as may be agreed upon, or as the proper Master of Titles in case of difference decides, shall be registered as owners. Restricting number of persons who may be registered as owners.

(2) Upon the registration of two or more persons as owners of the same land or of the same charge an entry may, with their consent, be made on the register to the effect that when the number of such owners is reduced below a certain specified number no registered disposition of such land or charge shall be made except under the order of the Court. Special entry, in certain cases.

(3) In such a case the words "No survivorship" in the entry shall be construed to mean that if any one of the owners should die no registered disposition of the land or charge shall be made except under order of the Court. 1 Geo. V. c. 28, s. 97. "No survivorship."

98.—(1) Registered land shall be described in such manner as the proper Master of Titles deems best calculated to secure accuracy, but such description shall not be conclusive as to the boundaries or extent of the land. Description of land.

(2) No alteration shall be made in the registered description of land, except under the order of the Court, or under section 119, or by way of explanation, or under Rules of Court; but this provision shall not extend to registered dealings with registered land in separate parcels, although such land was originally registered as one parcel. 1 Geo. V. c. 28, s. 98. No alteration to be made in registered description.

99.—(1) There may be registered as annexed to any land which is being or has been registered, subject to general rules and in the prescribed manner, a condition or covenant that such land or any specified portion thereof is not to be built on, or is to be or not to be used in a particular manner, or any other condition or covenant running with or capable of being legally annexed to land. Annexation of conditions or covenants to registered land. Imp. 38 & 39 V. c. 87, s. 84.

(2) The first owner and every transferee, and every other person deriving title from him, shall be deemed to be affected with notice of such condition or covenant; but any such condition or covenant may be modified or discharged by order of the Court, on proof to the satisfaction of the Court that who affected with notice.

Modification
or discharge
of covenants.

the modification will be beneficial to the persons principally interested in the enforcement of the condition or covenant.

Covenants
or conditions
running with
land.

(3) The entry on the register of a condition or covenant as running with or annexed to land shall not make it run with the land, if such covenant or condition on account of its nature, or of the manner in which it is expressed, would not otherwise be annexed to or run with the land.

Subsequent
transfers.

(4) Where a condition or covenant has been entered on the register as annexed to or running with land, and a similar condition is contained in a subsequent transfer or a similar covenant is in express terms entered into with the owner of the land by a subsequent transferee, or *vice versa*, it shall not be necessary to repeat such condition or covenant on the register or to refer thereto, but the proper Master of Titles may, upon a special application, enter such condition or covenant either in addition to or in lieu of the condition or covenant first mentioned. 1 Geo. V. c. 28, s. 99.

Registered
land to be
within Rev.
Stat. c. 121.

Imp. 38 & 39
V. c. 87,
s. 85.

100. All the provisions of *The Trustee Act* which are not inconsistent with the provisions of this Act shall apply to land and charges registered under this Act, but this enactment shall not prejudice the applicability to such land and charges of any provisions of that Act relating to land or choses in action. 1 Geo. V. c. 28, s. 100.

Indemnity of
Master of
Titles.

Imp. 38 & 39
V. c. 87,
s. 86.

101. Neither the Master of Titles, nor any Local Master of Titles, nor any person acting under their authority or under any order of Court or general rule, shall be liable to any action, suit, or proceeding for or in respect of any act or matter *bona fide* done or omitted to be done in the exercise or supposed exercise of the powers conferred by this Act, or of any such order or general rule. 1 Geo. V. c. 28, s. 101.

Instruments need not be Sealed.

Charges and
transfers
may be
made without
seal.

102. Notwithstanding the provisions of any statute, or any rule of law, any charge or transfer of land registered under this Act may be duly made by an instrument not under seal, and if so made the instrument and every agreement, stipulation and condition therein shall have the same effect for all purposes as if it were made under seal. 1 Geo. V. c. 28, s. 102.

Married Women.

Execution of
instruments
by married
women.

103. A married woman shall for the purposes of this Act be deemed a *feme sole* and may execute without seal any bar of dower or other instrument required under this Act. 1 Geo. V. c. 28, s. 103.

Persons under Disability.

104.—(1) In case any person who, if not under disability, might have made any application, given any consent, or done any act, or been party to any proceeding under this Act is an infant, an idiot or a lunatic the guardian of the infant, or committee of the estate of the idiot or lunatic, may make such application, give such consent, do such act and be party to such proceedings as such person, if free from disability, might have made, given, done or been party to, and shall otherwise represent such person for the purposes of this Act.

Where any party is a minor or lunatic, guardian, etc., may act.

Imp. 38 & 39 V. c. 87, s. 88.

(2) If the infant has no guardian, or the idiot or lunatic has no committee of his estate, or if a person yet unborn is interested, the official guardian shall act with like power, or the proper Master of Titles may appoint a person with like power to act for the infant, idiot, lunatic or person yet unborn. 1 Geo. V. c. 28, s. 104.

Official guardian to act if no guardian, etc., or Master may appoint some person.

Plans.

105.—(1) Where land is surveyed and subdivided for the purpose of being sold or conveyed in lots by reference to a plan which has not been already registered the person making the survey and subdivision shall register in the proper Land Titles Office a plan of the land on a scale of not less than one inch to every four chains.

Plan of lots to be sold by plan to be registered.

(2) The plan shall show in black India ink the number of the township, city, town or village lots and range or concession as originally laid out, and all the boundary lines thereof within the limits of the land being subdivided, except where such plan is a subdivision of a lot or lots on a former plan, in which case it shall show in ink of another colour the numbers or other distinguishing marks of the lot or lots subdivided and by broken lines the boundary lines thereof

Contents of plan.

(3) The number or other distinguishing mark, and the width both front and rear, shall be marked on each lot of the subdivision in black India ink, the scale shall also be marked on the plan, and such information as will show the depth of the lots and the courses of all the boundaries of or the division lines between the same, and the governing line or lines to which such courses are referred shall also be indicated.

Each lot to be numbered and scale shown.

(4) The position of all the posts or monuments, if any, planted by the surveyor, or of other objects marking the boundaries of any of the lots or the corners thereof shall also be shown.

Posts or monuments.

(5) The plan shall also show all roads, streets, railway land, rivers, canals, streams, lakes, mill-ponds, marshes or other marked topographical features within the limits of the land so subdivided, together with such other information as is required to show distinctly the position of the land.

Highways and topographical features.

Designation
of lots.

(5) On every such plan the lots shall be so described and designated by numbers, letters or words, that there shall not be more than one lot on such plan described and designated by the same number, letter or word, notwithstanding that the lots are on different sides of the same street or on different streets or in different blocks, and where the designation is by numbers the lots shall be numbered consecutively.

To show
what land is
laid out.

(7) The plan shall also show distinctly what land is being laid out thereby, and shall by proper colouring distinguish such land from all other land shown on the plan, but not in fact laid out thereby, and the last mentioned land shall be shown uncoloured.

Mounting
and size
of plan.

(8) The plan shall be mounted on stiff pasteboard of good quality, and when it exceeds thirty inches in length by twenty-four inches in width shall be folded so as not to exceed that size, and no such plan shall be less than twenty-four inches in length or twelve inches in width.

To be signed
by owner
and certified
by land
surveyor.

(9) The plan before being registered shall be signed by the person or the chief officer of the corporation by whom or on whose behalf the same is deposited, and shall be certified by an Ontario Land Surveyor in the prescribed form.

Master may
require ex-
planation.

(10) The proper Master of Titles, before filing the plan, may require evidence to be given explaining any seeming discrepancy between the measurements on the plan and the description of the land in the register, or may require evidence respecting any other matter of which he requires explanation.

Delivery of
plans to
municipal
treasurers.

(11) Every person who deposits a plan of any survey or subdivision of land made by such person for the purpose of selling or conveying the same in lots, or of any alteration of a previous survey or subdivision, shall at the same time deposit a duplicate of such plan, and the Master shall endorse thereon a certificate showing the number of such plan and the date when the duplicate original thereof was filed with him, and the same shall be delivered by the Master to the treasurer or assessment commissioner of the local municipality in which the land is situate upon request and without fee.

Deposit of
duplicate
plan.

(12) The Master shall not file or register any plan unless and until a duplicate thereof is deposited in accordance with the provisions of subsection 11.

Field notes of
surveyor.

(13) In the case of surveys hereafter made the plan shall be accompanied by a copy certified by the surveyor by whom the survey was made to be a true copy of the field notes of the survey, if any. 1 Geo. V. c. 28, s. 105.

Master may
require plan
to be regis-
tered in
certain
cases.

106.—(1) In cases not provided for by section 105 the proper Master of Titles may require a person applying for registration to deposit a plan of the land with the several measurements marked thereon, certified by an Ontario Land

Surveyor, and as many counterparts as may be required, upon one of the following scales:—

- (a) If the land, or the part thereof proposed to be transferred or dealt with, is of less area than one acre the plan shall be on a scale not less than one inch to two chains; Rule 50 and 51 made under Imp. Act 38 and 39 V.
- (b) If the land, or the part thereof proposed to be transferred or dealt with, is of greater area than one acre, but not exceeding five acres, the plan shall be on a scale not less than one inch to five chains;
- (c) If the land, or the part thereof proposed to be transferred or dealt with, is of greater area than five acres, but not exceeding eighty acres, the plan shall be on a scale not less than one inch to ten chains;
- (d) If the land, or the part thereof proposed to be transferred or dealt with, is of greater area than eighty acres the plan shall be on a scale of one inch to twenty chains.

(2) The owner shall sign the plan and verify its accuracy before some person authorized under section 132. Owner to verify plan.

(3) If the owner neglects or refuses to comply with such requirements the Master may refuse to proceed with the registration of the transfer or dealing. Effect of refusal.

(4) Subsequent subdivisions of the same land may be delineated upon a duplicate of the plan so deposited if the scale upon which it is drawn permits of that being done in conformity to the provisions of subsection 1; and the accuracy of the delineation of each such subdivision shall be certified and verified in the manner prescribed by subsections 1 and 2. Subsequent subdivisions.

(5) Where the land of which a plan is directed to be deposited includes parts of different subdivisions the plan shall represent the whole of each subdivision and shall indicate the location of the land to be transferred; but this shall not be necessary in the case of lots in a city, town or village, the plan of which has been registered, unless the Master otherwise directs. 1 Geo. V. c. 28, s. 106. Where plan includes parts of different subdivisions.

107. In case a plan of a subdivision lays out any portion of the land as a street, road, lane or common it shall not be registered unless, on the application of the owner of the land subdivided, with the consent in writing of all persons who are registered as mortgagees or chargees thereof. 1 Geo. V. c. 28, s. 107. Plan of street, road, lane, or common.

108. All instruments affecting the land or any part thereof lodged with the proper Master of Titles after a plan is registered shall conform and refer thereto, or registration shall not be had thereunder unless the Master under special cir- Instruments must conform to plan.

cumstances deems it proper to accept the same. 1 Geo. V. c. 28, s. 108.

Filing plans with roads less than 66 feet in width.

109.—(1) No plan upon which a road, street or highway less than 66 feet wide is laid out shall be registered unless and until the assent of the proper municipal council is registered therewith where such assent is by law necessary, and no plan upon which a street, road or lane is laid out shall be filed in any such office unless there is filed therewith the approval of the proper municipal council or unless such plan is approved by a Judge of the County or District Court of the county or district in which the land lies, where the same is not in the County of York or City of Toronto, or by the Master of Titles where the land is in the County of York or City of Toronto, after notice in each case to the proper municipal council. 1 Geo. V. c. 28, s. 109.

Approval of municipal council on terms.

(2) The approval of the proper municipal Council, referred to in this section, may be upon terms and conditions embodied in an agreement signed by the owner of the lands laid out by such plan, and by the municipality, and may be registered upon the lands so laid out. 2 Geo. V. c. 24, s. 2.

Plan not binding unless sale made according to it.

Amendment of plans by order of Court or a Judge.

110.—(1) No plan, although registered in an office of Land Titles, shall be binding on the person registering the same, or upon any other person, unless a sale has been made according to such plan; and in all cases amendments or alterations thereof may be ordered to be made at the instance of the person registering the same or his assigns, or of the owner for the time being of any of the land covered by the plan.

(a) By the Supreme Court or by a Judge thereof,

(b) Where the land is not in the County of York or City of Toronto by a Judge of the County or District Court of the county or district in which the land lies, or

(c) Where the land is in the County of York or City of Toronto by the Master of Titles,

if on application for the purpose duly made, and upon hearing all persons concerned, it is thought just so to order, and upon such terms and conditions as to costs and otherwise as may be deemed just and expedient. 1 Geo. V. c. 28, s. 110 (1); 2 Geo. V. c. 24, s. 3 (1).

Application as to plan by person filing or by owner.

(2) Any such application may be made either by the person filing the plan or by the owner for the time being of any of the land covered thereby.

Appeal.

(3) An appeal shall lie from any such decision to a Divisional Court.

(4) No part of a road, street, lane or alley upon which any such lot abuts, or which connects any such lot with, or affords access therefrom to the nearest public highway, shall be altered or closed up without the consent of the owner of such lot, but nothing herein shall interfere with the powers of municipal corporations with reference to highways. 2 Geo. V. c. 24, s. 3 (2).

No alteration or closing of street, etc., without consent of owner.

111. Where all the lots on any plan of subdivision registered in a registry office are registered under this Act the proper Master of Titles may require the Registrar to deliver the plan to him to be registered in his office; and the Registrar shall thereupon deliver the same taking a receipt therefor. 1 Geo. V. c. 28, s. 111.

Transfer of plans from registry offices.

Notices.

112.—(1) Every person whose name is entered on the register as owner of freehold or leasehold land or of a charge, or as cautioner, or as entitled to receive any notice, or in any other character, shall furnish a place of address in Ontario, and may from time to time substitute some other place of address in Ontario for that originally furnished.

Address of persons on register. Imp. 38 & 39 V. c. 87, s. 89.

(2) If any such person fails to furnish a place of address for service a notice sent by post addressed to such person at the place named in the registered instrument under which he claims as his place of residence shall be sufficient unless the proper Master of Titles otherwise directs.

In case address not furnished.

(3) Every notice by this Act required to be given to any person shall be served personally, or sent by registered post directed to such person at the address or last address, as the case may be, furnished, and unless returned shall be deemed to have been received by the person addressed within such period, not less than seven days exclusive of the day of posting, as may be prescribed.

Service of notices. Imp. 38 & 39 V. c. 87, s. 90.

(4) The envelope containing any notice under this Act shall have printed thereon the words "Office of Land Titles," and a request in the prescribed manner for the return thereof to the office of Land Titles in case the person to whom the notice is addressed cannot be found.

Return of notices by post-office. Imp. 38 & 39 V. c. 87, s. 91.

(5) On the return of any envelope containing any notice the Master shall act in the matter requiring the notice to be given in the manner prescribed. 1 Geo. V. c. 28, s. 112.

Master to act on return of notice.

113. A purchaser for valuable consideration when registered shall not be affected by the omission to send any notice by this Act directed to be given, or by the non-receipt thereof. 1 Geo. V. c. 28, s. 113.

Purchasers for value not affected by omission to send notices. Imp. 38 & 39 V. c. 87, s. 92.

Specific Performance.

Power of court in action for specific performance.

Imp. 88 & 39
V. c. 87,
s. 93.

114.—(1) Where an action is instituted for the specific performance of a contract relating to registered land, or a registered charge, the Court having cognizance of the action may by such mode as it deems expedient cause all or any persons who have registered estates or rights in the land or charge, or have entered notices, cautions or inhibitions against the same to appear in the action and show cause why the contract should not be specifically performed; and the Court may direct that any order made by the Court in the action shall be binding on such persons or any of them.

Costs in action for specific performance.

Imp. 38 & 39
V. c. 87,
s. 94.

(2) All costs awarded to any person so appearing may, if the Court so orders, be taxed as between solicitor and client. 1 Geo. V. c. 28, s. 114.

Rectification of the Register.

Establishment of adverse title to land.

Imp. 38 & 39
V. c. 87,
s. 95.

115. Subject to any estates or rights acquired by registration in pursuance of this Act, where any Court of competent jurisdiction has decided that any person is entitled to any estate, right, or interest in or to any registered land or charge, and as a consequence of such decision the Court is of opinion that a rectification of the register is required, the Court may make an order directing the register to be rectified in such manner as may be deemed just. 1 Geo. V. c. 28, s. 115.

Register to be rectified under order of court.

Imp. 38 & 39
V. c. 87,
s. 90.

116. Subject to any estates or rights acquired by registration in pursuance of this Act, if any person is aggrieved by any entry made, or by the omission of any entry from the register, or if default is made or unnecessary delay takes place in making any entry in the register, any person aggrieved by such entry, omission, default or delay may apply to the Court in the prescribed manner for an order that the register may be rectified; and the Court may either refuse the application with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, make an order for the rectification of the register. 1 Geo. V. c. 28, s. 116.

Master to obey orders of court.

Imp. 38 & 39
V. c. 87,
s. 97.

117. The Master of Titles and the Local Masters of Titles shall obey the order of any competent Court in relation to any registered land on being served with the order or an office copy thereof. 1 Geo. V. c. 28, s. 117.

Cancellation of fraudulent entries

118.—(1) Upon the conviction under this Act, or under the Criminal Law of Canada, of any person for an offence whereby such person fraudulently procured an entry on the register by reason of which any person other than the rightful owner has become the registered owner of land, or by reason of which land under this Act has been wrongfully

incumbered, the proper Master of Titles, on the application of the rightful owner, may cancel such wrongful entry and may enter the rightful owner as the registered owner of the land.

(2) If while the wrongful entry was subsisting on the register any innocent person has been registered as the owner of any charge upon or any estate, right or interest in the land the Master, instead of cancelling the wrongful entry, may make an entry on the register stating the fact of the conviction and revesting the land in the rightful owner subject to such charge, estate, right or interest, and the land shall thereupon be vested in the person named in such last mentioned entry in accordance with the terms thereof.

Where land has been transferred to innocent holder.

(3) This section shall apply to past as well as future cases.

1 Geo. V. c. 28, s. 118.

Application of section.

119.—(1) The proper Master of Titles may *sua sponte* and without affidavit enter a caution to prevent the dealing with any registered land when it appears to him that an error has been made in any entry by mis-description of such land or otherwise.

Entry of caution by Master in case of error.

(2) Subject to the rules the Master, before the receipt of any conflicting instrument, or after notifying all persons interested, upon such evidence as appears to him sufficient, may correct errors and supply omissions in certificates of ownership or of charge, or in the register, or in any entry therein, and may call in any outstanding certificate for that purpose.

Correction of errors.

(3) Where the Master under this section restores to the register any covenant or condition he may do so with such modifications as he deems advisable so as to do the least possible injury to the persons affected by their omission or by their restoration, and upon notice to the Attorney-General for Ontario, at the same time or subsequently, may determine what damages, if any, shall be paid to any of the persons claiming to have been injuriously affected by the omission of the covenants or by their restoration.

1 Geo. V. c. 28, s. 119.

Restoration of covenants or conditions and compensation therefor.

120. Where land has been registered under this Act, and the Minister of Lands, Forests and Mines under *The Public Lands Act* directs an incorrect patent to be cancelled and a correct one to be issued in its stead, the proper Master of Titles, upon receipt of the subsequent patent, if no conflicting instrument has been received, shall amend the entry on the register to accord with the amending patent, or if a conflicting instrument has been received the Master, after notifying all persons interested, may make such amendment.

1 Geo. V. c. 28, s. 120.

Correction of errors in patents after registration. Rev. stat. c. 28.

Fraud.

Fraudulent
dispositions

Imp. 38 & 39
V. c. 87,
s. 98.

121. Subject to the provisions of this Act, with respect to registered dispositions for valuable consideration, any disposition of land or of a charge on land which, if unregistered, would be fraudulent and void shall, notwithstanding registration, be fraudulent and void in like manner. 1 Geo. V. c. 28, s. 121.

Certain
fraudulent
acts
declared
to be
offences.

Imp. 38 & 39
V. c. 87,
s. 100.

122.—(1) Any person who fraudulently procures, attempts to fraudulently procure, or is privy to the fraudulent procurement of any entry on the register, or of any erasure from the register or alteration of the register, shall be guilty of an offence under this Act, and upon conviction shall be liable to imprisonment for any term not exceeding two years, with or without hard labour, or to be fined such sum not exceeding \$1,000 as the Court before which he is tried may adjudge.

Fraudulent
entries, etc.,
to be void.

(2) Any such entry, erasure, or alteration shall be void as between all parties or privies to the fraud. 1 Geo. V. c. 28, s. 122.

R.S.C. c. 146.

See The Criminal Code, ss. 175 and 420, as to the fraudulent registration of titles and making false affidavits.

ASSURANCE FUND.

Assurance
fund.

123.—(1) An Assurance Fund shall be formed for the indemnity of persons who may be wrongfully deprived of land or some estate or interest therein by reason of the land being brought under the provisions of this Act, or by reason of some other person being registered as owner through fraud, or by reason of any misdescription, omission, or other error in a certificate of ownership or of charge or in any entry on the register.

Assurance
fund, how
constituted.

Percentage
of value
of land,
and of
buildings.

(2) In order to constitute such fund there shall be payable on the first registration under this Act of any land with an absolute or qualified title, in addition to all other fees, a sum equal to one-fourth of one per cent. of the value of the land apart from the buildings or fixtures thereon, and one-tenth of one per cent. of the value of the buildings and fixtures, and with a possessory title one-eighth of one per cent. of the value of the land apart from the buildings or fixtures thereon, and one-twentieth of one per cent. of the value of the buildings and fixtures.

Where sum
less than \$1.

(3) Where the sum to be paid under the foregoing provision does not amount to \$1 the amount payable shall be \$1.

To be paid
into Court
and invested.

(4) Subject to the rules money payable under subsections 2 and 3 shall be paid into Court, with the privy of the Accountant of the Supreme Court, and shall be placed to the credit of an account to be intituled "Assurance Fund under the Land Titles Act," and, subject to the provision of

subsection 5, shall be invested from time to time under the direction of the Court, and the interest or income derived therefrom shall be credited to the same account.

(5) All money paid under this section and in Court at the credit of the "Assurance Fund" and all money hereafter payable under this section shall, on his demand, be paid to the Treasurer of Ontario.

(6) Where the amount to be paid into the assurance fund is not more than \$10 no fee shall be payable for a direction to the bank to receive the same, and where such amount is payable in respect of a proceeding before a Local Master of Titles the person desiring to pay the same may, at his own risk, transmit the amount by a money order, payable to "The Accountant of the Supreme Court at Toronto," in a registered letter addressed to the Accountant, together with a requisition in the prescribed form.

(7) Subject to the rules the value of the land shall be ascertained by the oath of the applicant unless the proper Master of Titles dispenses therewith.

(8) Subject to the rules, if the oath of the applicant is dispensed with, or if the Master is not satisfied as to the correctness of the value stated by the oath of the applicant or of any other person, he may require the affidavit or certificate in that behalf of a sworn valuator; and such affidavit or certificate shall be conclusive.

(9) The expense of obtaining such valuation or certificate as allowed by the Master shall be paid to the Master by the registered owner before any dealing with the land is registered.

(10) The Master may require any applicant for registration to indemnify the Assurance Fund against loss by a bond or covenant to His Majesty, either with or without sureties, or by such other security as he considers expedient.

(11) It shall not be necessary that the assurance fees payable on first registration be then paid, but if not then paid the same shall be a charge on the land, and the amount with interest at 5 per cent. compounded annually shall be stated in the entry of ownership to be a charge on the land, and no subsequent transfer or charge of the land or any transmission thereof, or of any part thereof, shall be registered, except as is in this section provided, until the amount of such charge shall have been paid into the Assurance Fund and proper proof of such payment furnished to the Master, but this subsection shall not apply to cases coming within subsection 12.

(12) In the case of land situate in any of the Provisional Judicial Districts where the letters patent or a certified copy of the order in council granting the land has been forwarded to the Local Master of Titles for the purpose of registration,

and the amount payable into the Assurance Fund is not paid, a note shall be made on the register and on the certificate that the land is liable to pay the assurance fee, and no subsequent transfer or charge of the land or transmission thereof shall be registered until such assurance fee, namely, a sum equal to one-fourth of one per cent. of the value at the time of payment of the land apart from the buildings or fixtures and one-tenth of one per cent. of the value of the buildings erected on or affixed thereto before the first registration thereof, but not in any case less than one dollar in respect of any parcel, is paid.

Case of land sold for taxes or by order of Court.

(13) Where land is sold for taxes, or upon the winding up of a company, or under execution, or under the order of a Court, the Master may register the new immediate ownership subject to such charge, and where part of a parcel is so sold or is expropriated he may, upon proof of payment of the proportion of such assurance fund charge which he deems to be fairly attributable to the part so sold or expropriated, note in the register the fact of such payment in respect of the land so sold or expropriated and enter that part as free of the charge.

Where land exceeds 400 acres, and part transferred.

(14) Where land exceeding 400 acres is entered in one parcel the Master, upon a transfer of part of such parcel, may, in like manner, allow payment of a proportionate part of the assurance fees and enter the part transferred free of the charge. 1 Geo. V. c. 28, s. 123.

Remedy of person wrongfully deprived of land.

124.—(1) Any person wrongfully deprived of land, or of some estate or interest therein, by reason of the land being brought under this Act, or by reason of some other person being registered as owner through fraud or by reason of any misdescription, omission or other error in any certificate of ownership or charge, or in any entry on the register, shall be entitled to recover what is just, by way of compensation or damages, from the person on whose application the erroneous registration was made, or who acquired the title through the fraud or error.

Purchaser or mortgagee in good faith for value not liable.

(2) Subsection 1 shall not render liable any purchaser or mortgagee in good faith for valuable consideration by reason of the vendor or mortgagor having been registered as owner through fraud or error, or having derived title from or through a person registered as owner through fraud or error, whether the fraud or error consists in a wrong description of the property or otherwise.

Liability of assurance fund to compensate person wrongfully deprived.

(3) If the person so wrongfully deprived is unable by such means or otherwise to recover just compensation for his loss he shall be entitled to have the same paid out of the assurance fund, so far as the fund may be sufficient for that purpose having reference to other charges thereon, if the application is made within six years from the time of having been

so deprived; or, in the case of a person under the disability of infancy, lunacy or unsoundness of mind, within six years from the date at which the disability ceased.

(4) The liability of the fund for compensation and the amount of compensation shall, subject to appeal as in other cases, be determined by the Inspector, unless the Court or the Inspector on application directs some other way of ascertaining and determining the same. How compensation to be determined.

(5) The costs of the proceedings shall be in the discretion of the Court or of the Inspector. Costs of proceedings.

(6) Any sum paid out of the assurance fund may afterwards, for the benefit of the fund, be recovered by action in the name of the Inspector from the person on whose application the erroneous registration was made or who acquired the title through the fraud or error or from his estate, and the Inspector's certificate of the payment out of the assurance fund shall be sufficient proof of the debt, but where the erroneous registration was made or the title acquired by mere error and without fraud, credit shall be given for any sum which such person may have paid into the assurance fund in respect of such land. How assurance fund to be recovered.

(7) Where a registered disposition would, if unregistered, be absolutely void, or where the effect of the error would be to deprive a person of land of which he is in possession, or in receipt of the rents and profits, the Inspector may, in the first instance or after a reference to the Court, direct the rectification of the register, and in case of such rectification the person suffering by the rectification shall be entitled to the compensation provided for by this section. Rectification of register. Imp. Act, 60-61 V. c. 65, s. 7 (2). 1 Geo. V. c. 28, s. 124.

125.—(1) Where any person makes a claim upon the assurance fund for compensation in respect of land patented as mining land or in respect of any land the chief value of which consists in the ores, mines or minerals therein, and it appears that such person is entitled to recover in respect of such land or of some interest therein, in determining the amount of compensation to be paid to such person the entire value of the land shall not be taken at a greater sum than eight hundred times the amount of the fees paid into the assurance fund in respect of the land, either in the first instance or under the provisions of section 126. Valuation of mining lands where compensation claimed out of assurance fund.

(2) Where such fees or some part thereof were paid into the fund in respect of other land in addition to that for which a claim is so made without it appearing what amount was paid in respect of the particular parcel of land with reference to which the claim is made, the fees so paid, or the portion thereof as to which the fact may not appear to be otherwise, shall be deemed to have been paid *pro rata* in Apportionment pro rata.

accordance with the acreage or other superficial contents of the whole parcel or of the various parcels in respect of which the fees were paid. 1 Geo. V. c. 28, s. 125.

Additional payments into fund by transferee, etc.

126.—(1) Where any person taking a transfer or charge of any land, coming within the provisions of the next preceding section, is of the opinion that a value to be determined under such section would not furnish a fair basis for compensation in case of loss he may, with the privity of the proper Master of Titles, pay into Court to the credit of the assurance fund such further sum as shall, with the amount previously paid into the assurance fund in respect of such land, make up one-fourth of one per cent. of the value of the land at the time of making the payment, such value to be determined in the manner provided by section 123.

No additional payment without special leave.

(2) No such additional payment shall be made, except by special leave of the Master, unless the same is made within three months after the registration of the transfer or charge under which such person claims.

Valuation not affected where error committed before payment made.

(3) No such payment shall affect the valuation of the land where the error which gives the right to compensation was committed before such payment was made.

Entry to be made of additional payment.

(4) Where any additional payment is made under this section the Master shall enter a memorandum of the particulars thereof in the margin of the entry of ownership, and shall in such entry show the total amount which has been paid into the fund in respect of such land. 1 Geo. V. c. 28, s. 126.

No claim to compensation from assurance fund.

127.—(1) No person shall be entitled to recover out of the assurance fund any compensation where

When person first registered could have conveyed good title to purchaser for value without notice.

(a) The claim is founded upon a right existing at the time of the first registration of the land and the state of the title of the land at that time was such that the person who was first registered, or the person on whose nomination or authorization such registration was made by a duly registered conveyance could have conferred, as against the claimant, a valid title to a purchaser in good faith for valuable consideration without notice of any defect in the title; and no sufficient caution had been registered and was in force when the application for first registration was made or a patent was forwarded for registration and the proper Master of Titles had not actual notice of the defect prior to the first registration;

Proviso.

New Zealand Act No. 57, 1885, s. 53.

Where claimant had notice of registration proceedings.

(b) The claimant, by direction of the Master or in accordance with the practice of the office, had been served with a notice of the proceedings being had in the office, whether such proceedings were prior or sub-

sequent to first registration, and failed to appear in accordance with the requirements of the notice; or if the Master had adjudicated against him and he had failed to prosecute successfully an appeal against the Master's decision;

- (c) The claimant has caused or substantially contributed to the loss by his act, neglect or default and the omission to register a sufficient caution, notice, inhibition or restriction to protect a mortgage by deposit or other equitable interest or any unregistered right, or other equitable interest or any unregistered interest or equity created under section 68 or otherwise shall be deemed neglect within the meaning of this clause.
- Where claimant's negligence has caused loss.
Imp. Act, 60-6 V. c. 65, s. 7, subs. 8.

(2) In this section "Claimant" shall include the person actually making the claim and any person through whom he claims who he alleges was wrongfully deprived of land or of some estate or interest therein. 1 Geo. V. c. 28, s. 127.

Interpretation of "claimant."

128.—(1) The Treasurer of Ontario, on receipt of the money paid to him under subsection 5 of section 123, shall issue to the Accountant of the Supreme Court in trust Ontario Government Stock to an amount equal to the sum so received, and such stock shall represent the assurance fund and be available for the same purposes.

Duty of Provincial Treasurer as to issuing Government Stock.

(2) The stock shall be payable or redeemable at such time and shall be subject to such conditions as to inscription, registration and transfer as the Lieutenant-Governor in Council may deem advisable, and shall bear interest at the rate of two and one-half per centum per annum.

Conditions of issue.

(3) The stock, together with the interest thereon, shall be charged upon and paid out of the Consolidated Revenue Fund.

Charge of same on Consolidated Revenue Fund.

(4) All sums which become payable out of the assurance fund shall to the extent, but not exceeding the amount, of such fund be paid by the Treasurer of Ontario to the persons entitled thereto, out of the Consolidated Revenue Fund, on the production of an order of the Court or a Judge authorizing or directing the payment to be made or of a certified copy thereof, and the sums so paid out shall be credited as payments on account of the stock in the hands of the Accountant, and the amount thereof shall be reduced accordingly. 1 Geo. V. c. 28, s. 128.

Payment to persons entitled.

WITHDRAWING LAND FROM THE REGISTRY.

129.—(1) Where, after land has been registered, special circumstances appear or subsequently arise which make it inexpedient that the land should continue under this Act the owner may apply in the prescribed manner to the proper Master of Titles for the withdrawal of the land from the Act.

Application to withdraw registered land.

Certificate
by Master.

(2) If the owner proves before the Master that all persons interested in the land proposed to be withdrawn consent to its withdrawal and satisfies the Master that special circumstances exist which render the withdrawal of such land or a part thereof expedient the Master may issue his certificate describing the land or such part thereof as the consent covers and as the Master deems proper in such a manner that the certificate can be properly registered in the registry office for the registry division in which the land is situate, and upon the certificate being issued this Act shall cease to apply to the land described therein, and the land shall thereafter be subject to the ordinary laws relating to real estate and to the registry laws.

After issue
of certificate
Act to cease
to apply to
the land.

Certificate
to be counter-
signed by
Inspector.

(3) The certificate of a Local Master under this section shall not be valid unless approved and countersigned by the Inspector.

Registration
of certificate.

(4) Upon the production of the certificate to the registrar of deeds and payment of a fee of \$1 the same shall be duly registered.

Application
of section.

(5) This section shall not apply to land registered under section 159. 1 Geo. V. c. 28, s. 129.

ADMINISTRATION AND MISCELLANEOUS.

Office of Land Registry.

Seal of office.
Imp. 38 & 39
V. c. 87,
s. 107.

130. There shall be a seal for every office of Land Titles. 1 Geo. V. c. 28, s. 130.

Inspector to
frame and
promulgate
forms.
Imp. 38 & 39
V. c. 108.

131. The Inspector shall prepare and cause to be printed and promulgated such forms and directions as he may deem requisite or expedient for facilitating proceedings under this Act. 1 Geo. V. c. 28, s. 131.

Administra-
tion of oaths.

Rev. Stat.
c. 124.

132. The proper Master of Titles, or any officer of the office of Land Titles authorized by him in writing, or any person authorized for a like purpose under *The Registry Act*, may administer an oath for any of the purposes of this Act. 1 Geo. V. c. 28, s. 132.

Depositions
taken before
special exam-
iners may be
used before
Master of
Titles.

133.—(1) The proper Master of Titles in any application made to him may act upon depositions or examinations taken before any of the special examiners appointed by the Court, who may administer the requisite oath to any person whose deposition or cross-examination the Master has requested such examiner to take, and any such deposition or examination may be taken in shorthand, and any *viva voce* evidence given before the Master may be taken down by a sworn shorthand writer if the examining party so desires.

(2) The Master may name the witnesses to be examined or he may request the examiner to take the examination of all witnesses produced by any named person or persons or of any class of witnesses. 1 Geo. V. c. 28, s. 133.

134.—(1) The proper Master of Titles, by summons under the seal of his office, may require the attendance of all such persons as he may think fit in any application made to him, and may in the summons require any person to produce for inspection any document, deed, instrument or evidence of title to the production of which the applicant or any trustee for him is entitled.

Power of Master to summon witnesses. Imp. 38 & 39 V. c. 109.

(2) He may also, by a like summons, require any person having the custody of any map, plan, or book made or kept in pursuance of any Statute to produce such map, plan, or book for his inspection.

To require production of plans, books, etc.

(3) He may examine upon oath any person appearing before him, and he may allow to every person summoned by him reasonable charges for his attendance.

Examination on oath.

(4) Any charges allowed by the Master under this section shall be deemed to be charges incurred in or about proceedings for registration of land and may be dealt with accordingly.

Charges for attendance, etc.

(5) If any person disobeys any order of the Master made under this section the Master may certify such disobedience to the Court, and thereupon such person may be punished by the Court in the same manner as if the order were the order of the Court.

Disobedience of orders of Master.

(6) If any person, after the delivery to him of the summons or of a copy thereof, wilfully neglects or refuses to attend in pursuance of the summons or to produce such map, deed, instrument, evidence of title, plan, book or other document or to answer upon oath or otherwise such questions as may be lawfully put to him by the Master he shall incur a penalty not exceeding \$50, recoverable under *The Ontario Summary Convictions Act*.

Non-attendance or refusal to answer questions. Imp. 38 & 39 V. c. 87, s. 110. Rev. Stat. c. 90

(7) No person shall be required to attend in obedience to any summons, or to produce documents unless the fees and allowances for his attendance in accordance with the tariff of the Court are paid or tendered to him. 1 Geo. V. c. 28, s. 134.

Tender of conduct money and fees.

135. The treasurer of the proper municipality, upon payment of the fee prescribed by section 136 of *The Assessment Act*, shall furnish to any person requiring the same in respect of land registered or with reference to which an application for registration is pending, a certificate of payment of taxes, charges, rates and assessments, in the prescribed form, or in a form as nearly corresponding thereto as the information given by his books of office will allow, and the certificate shall be binding upon the municipality. 1 Geo. V. c. 28, s. 135.

Certificates as to taxes. Rev. Stat. c. 195.

Appointment
of deputy
of Master.

136.—(1) In case of the illness or absence of the Master of Titles or of a Local Master, or for any other cause, the Lieutenant-Governor in Council may appoint a person to act as the Deputy *pro tempore* of the Master or Local Master, and such Deputy, while so acting, shall have all the powers of the Master or Local Master for whom he is appointed Deputy.

To act
from time
to time.

(2) A person may be appointed under this section who shall have power to act from time to time.

Until auth-
ority revoked,
or appoint-
ment to
office made.

(3) In case of the death of a Master the deputy may act until his authority is revoked or a Master is appointed and assumes the duties of his office. 1 Geo. V. c. 28, s. 136.

Right to Inspect Registry.

Right to
inspect
documents.

Imp. 88 & 89
V. c. 87,
s. 104.

137. Subject to such regulations and exceptions, and to the payment of such sums as may be fixed by general rules, any person registered as owner of any land or charge and any person authorized by any such owner, or by an order of the Court, or by general rule, but no other person, may inspect and make copies of and extracts from any document in the custody of the proper Master of Titles relating to such land or charge. 1 Geo. V. c. 28, s. 137.

Rules.

Power to
make general
rules.
Rev. Stat. c. 56.
Imp. 88 & 89
V. c. 87,
s. 111.

138. The Lieutenant-Governor in Council, or the Judges of the Supreme Court, under the authority of sections 109 and 110 of *The Judicature Act*, which are to be read as applying to this Act, may make General Rules in respect of

- (a) The mode in which the register is to be made and kept;
- (b) The forms to be observed, the precautions to be taken, the instruments to be used, the notices to be given, and the evidence to be adduced in all proceedings or in connection with the registration, and in particular with respect to the reference to counsel of any title to land proposed to be registered with an absolute title;
- (c) The custody of any instruments coming into an office of land titles, with power to direct the destruction of any of them where they have become altogether superseded by entries on the register or have ceased to have any effect;
- (d) The duties which are to be performed by the Master of Titles, the Local Masters and other officers employed; and what acts of the Master may be done by other officers;

- (e) The costs to be charged by solicitors in or incidental to or consequential on the registration of land, or any other matter required to be done for the purpose of carrying this Act into execution, with power to require such costs to be payable by commission, percentage, or otherwise, and to bear a certain proportion to the value of the land registered, or to be determined on such other principle as may be thought expedient;
- (f) The taxation of such costs and the persons by whom such costs are to be paid;
- (g) Any matter by this Act directed or authorized to be prescribed;
- (h) Any other matter or thing, whether similar or not to those above mentioned, in respect of which it may be deemed expedient to make rules for the purpose of carrying this Act into execution.

(2) Rules may be made in like manner with respect to the amount of fees payable under this Act, and regard may be had,

Rules re-
specting fees.
Imp. 38 & 39
V. c. 87,
s. 112.

- (a) In the case of the registration of land or of any transfer of land on the occasion of a sale,—to the value of the land, as determined by the amount of purchase money; or to the value of it to be ascertained in such manner as may be prescribed;
- (b) In the case of registration of a charge or of any transfer of a charge,—to the amount of such charge. 1 Geo. V. c. 28, s. 138.

139.—(1) Subject to the rules the fees payable in respect^{Fees.} of such business as is analogous to the business under *The Registry Act* shall be the same as the fees payable to the Registrar under that Act; and all other fees and costs, whether in respect of business done by the Master of Titles, Local Master of Titles or by other officers, or by solicitors under this Act, shall be the same as nearly as may be as are payable in like proceedings in the Supreme Court.

(2) The stamps for all fees payable on a certificate of ownership or a certificate of charge shall be affixed to the registered transfer or charge and not to the certificate, and all stamps payable in respect of registration shall be affixed to the instruments registered and not to the entry on the register. 1 Geo. V. c. 28, s. 139.

Stamps to
be affixed
to registered
transfer or
charge.

Appeals.

140. Except as provided by section 110 an appeal shall lie from any act, order, or decision of the Master of Titles or a Local Master of Titles under this Act to a Judge of the High Court Division and from him to a Divisional Court. 1 Geo. V. c. 28, s. 140.

Appeals
from Master.

Appeal.

Imp. 38 & 39
V. c. 87,
s. 117.

141. Any person affected by an order made under this Act by a Judge of the High Court Division may appeal from him to a Divisional Court within the prescribed time, and subject to the rules in like manner as in the case of other appeals to that Court. 1 Geo. V. c. 28, s. 141.

Errors in Proceedings.

Proceedings
not void for
want of form.

142. No application, order, affidavit, certificate, registration or other proceedings shall be invalid by reason of any mistake not affecting the substantial justice of the proceeding. 1 Geo. V. c. 28, s. 142.

Oath of Office and Security by Officers.

Oath of office
to be taken
by Master
of Titles.

143.—(1) The Master of Titles, before he enters upon the duties of his office, shall take and subscribe before a Judge of the Supreme Court the oath of office in the form following:—

I, A.B., do solemnly swear that I will faithfully, and to the best of my ability, perform the duties of the office of Master of Titles.

By Local
Master or
Deputy.

(2) Every Local Master of Titles and every Deputy of the Master of Titles or of a Local Master, before he enters upon the duties of his office, shall take and subscribe an oath of office similar to that required to be taken by the Master of Titles.

Before whom
to be taken.

(3) In the case of a Local Master or of a Deputy of a Local Master, the oath may be taken before a Judge of the County or District Court.

To be trans-
mitted to
Provincial
Secretary.

(4) The oaths of office shall be transmitted to the Provincial Secretary. 1 Geo. V. c. 28, s. 143.

Bond of
Master.

Rev. Stat. c. 15

144. Before the Master of Titles or a Local Master of Titles enters upon the duties of his office he shall furnish security in accordance with the provisions of *The Public Officers' Act*. 1 Geo. V. c. 28, s. 144.

Masters or Officers not to act as Agents for Investors.

Master, etc.,
not to act as
agent, etc., of
investors.

145.—(1) No Master of Titles, officer or clerk appointed under this Act, shall, directly or indirectly, act as the agent of any corporation, society, company, or person investing money and taking securities on land, or advise for any fee or reward, or otherwise, upon titles to land, or practise as a conveyancer or carry on or transact within the office any business or occupation other than his duties as such Master, officer or clerk, or as holder of some other office under the Government of Ontario.

(2) This section shall apply to every Local Master, but as applied to him, and the officers and clerks in his office, the word "land" shall mean land within the county, city, town or district for which he is Local Master. 1 Geo. V. c. 28, s. 145.

EXTENSION OF ACT TO OTHER LOCALITIES AND EXPENSES.

146.—(1) The municipal council of a county, or of a city or town separated from the county for municipal purposes, may pass a by-law declaring it expedient that the provisions of this Act be extended to the county, city or town.

(2) The municipal corporations of the County of York and City of Toronto and of any county, city or town which has passed or shall pass a by-law under subsection 1 shall provide proper fire-proof and other accommodation for an office of Land Titles; and, so far as the expenses of the office are not covered by the fees collected thereat, the corporation shall pay the same, including the salary of the Master of Titles of the locality, and all necessary and proper books, stationery, furniture, and lighting, cleaning and heating of the office, and attendance, and other matters and things incident to the proper conduct of the business of the office.

(3) Where this Act is extended to a county which includes a city or town separated from the county for municipal purposes, the city or town and county shall share the expenses to be borne by the locality under this Act, in such proportions as may be determined by arbitration under *The Municipal Act*, in case the councils interested do not agree in respect thereto.

(4) Where such a by-law has been passed and proper accommodation has been provided either in connection with the registry office or at some other convenient place to the satisfaction of the Inspector, and approved by the Lieutenant-Governor in Council, the Lieutenant-Governor may, by his proclamation, extend the operation of this Act to such county, city or town from a day to be named in the proclamation.

(5) The fact of the conditions precedent to the issue of such proclamation having been performed shall be conclusively established by the issue of the proclamation. 1 Geo. V. c. 128, s. 146.

147.—(1) Where not less than twenty ratepayers of any county in which is situate a city or a town to which the provisions of this Act have been extended, who are owners of land situate in such county of the aggregate assessed value of \$400,000, petition the Lieutenant-Governor in Council for the issue of a proclamation extending the provisions of this Act to the county, and the Lieutenant-Governor in Council

declares that it is expedient that the same should be so extended, the provisions of section 146 shall apply to such county as fully as they would have been applicable had a by-law been passed by the council of the county.

Where Local Master to be entitled to a salary.

(2) In the cases provided for by subsection 1 the Local Master shall not be entitled to be paid a salary, unless the county council passes a resolution for the payment to him of a salary to be provided by the county, but such Local Master shall be entitled to retain for his own use the fees collected upon proceedings in his office.

Expenses of introduction of system, by whom to be paid.

(3) All costs and expenses incurred in introducing the Land Titles system into the county, or incurred during one year thereafter in connection therewith, shall be paid by the petitioners.

Non-resident owners to be deemed ratepayers.

(4) The owners of land which is assessed as land of non-residents shall be deemed ratepayers within the meaning of this section. 1 Geo. V. c. 28, s. 147.

Surplus fees under Rev. Stat. c. 124 to be applied in defraying expenses of Land Titles Office.

148. Where this Act applies to a county, city or town entitled to receive money under sections 101 and 102 of *The Registry Act* the registrar shall pay to the Treasurer of Ontario, to be applied, so far as necessary, in defraying the salary of the Master and other expenses of the office, the money payable either directly or indirectly to the county, city or town under that Act, and the Treasurer shall pay the balance to the county, city or town; and if the amount so paid to the Treasurer is not sufficient the residue, or if nothing is payable by the registrar, the whole of such salary and expenses shall be made good to the Province by the corporation of the county, city or town. 1 Geo. V. c. 28, s. 148.

LOCAL MASTERS OF TITLES.

Local Masters of Titles *ex-officio*. Rev. Stat. c. 123.

149.—(1) Where at the time of the issue of a proclamation under section 146 there is a Referee of Titles, under *The Quieting Titles Act*, residing in the locality such referee shall *ex-officio* be the first Local Master of Titles therefor, unless he practises as a barrister or solicitor, or is a Judge of the County Court, and he shall hold the office during the pleasure of the Lieutenant-Governor in Council.

Appointment of Local Masters.

(2) Subject to the provisions of subsection 1 the Lieutenant-Governor in Council may appoint a Master of Titles for any locality in which this Act is in force to be styled "The Local Master of Titles" for the county, city, town or district, as the case may be, who shall hold office during pleasure.

Qualifications.

(3) The person appointed may, in the discretion of the Lieutenant-Governor in Council, be a Judge of a County or District Court, a barrister or solicitor, whether practising or not, or a registrar. 1 Geo. V. c. 28, s. 149 (1-3).

(4) The Local Master of Titles shall be paid by salary or fees for his services in that capacity, such salary to be fixed by the Lieutenant-Governor in Council from time to time, with reference to the amount or probable amount of the business, on the report of the Inspector and shall be paid for his services in entering patents under sections 159 to 162 such sum as the Lieutenant-Governor in Council shall direct. 1 Geo. V. c. 28, s. 149 (4); 2 Geo. V. c. 24, s. 4.

Salary to be fixed by the Lieutenant-Governor in Council.

(5) The Order in Council shall be laid before the Assembly as provided in respect of Orders in Council under section 100 of *The Judicature Act*.

Order to be laid before Assembly. Rev. Stat. c. 56.

(6) The Lieutenant-Governor in Council may commute the fees payable to a Registrar of Deeds or Local Master of Titles in any county or district whether both offices are held by one officer or otherwise for a fixed sum each year, provided that such sum shall not exceed the income which such Registrar or Local Master would have derived from fees during such year, and the fees so commuted shall, on or before the 15th day of January in each year, be paid over to the Treasurer of Ontario in the case of a district for the use of the Province, and in the case of a county or city shall be subject to such division between such county or city and the Province as the Lieutenant-Governor in Council may direct.

Commutation of fees of Registrar or Local Master of Titles.

(7) Where such Registrar or Local Master holds office for part of a year he or his executors or administrators shall be entitled to the just proportion of such commuted fixed sum. 1 Geo. V. c. 28, s. 149 (5-7).

Apportionment of commutation.

DUTIES AND POWERS OF LOCAL MASTERS.

150. Except where otherwise provided by this Act every Local Master of Titles, in respect to land situate within the territory for which he is appointed, shall have all the authority of and perform all the duties which, in the County of York, are performed by the Master of Titles, subject to appeal in the same manner. 1 Geo. V. c. 28, s. 150.

Master's authority and duties.

First Registration.

151.—(1) If, upon an application for first registration the Local Master of Titles finds that the applicant or his nominee is entitled to be registered he shall sign a memorandum to that effect at the foot of the application and shall transmit the same to the Inspector, with the deeds, evidence and other papers before him, and a draft of the entry of ownership proposed to be made.

Local Master to transmit title deeds, etc., to Inspector.

(2) If the Inspector concurs in the opinion of the Local Master he shall approve thereof and shall return the papers transmitted to him, and the Local Master may thereupon register the applicant or his nominee as owner.

Proceedings where Inspector concurs in Master's finding.

Proceedings
where Inspec-
tor does not
concur.

(3) If the Inspector does not concur in the opinion of the Local Master he shall communicate his opinion to the Local Master and shall cause such action to be taken as he deems expedient, and if his objections are not removed by explanations or additional evidence the applicant or his nominee shall not be registered unless the Court on appeal, or on a case stated for its opinion, otherwise directs.

Stay of
proceedings
in case appeal
desired.

(4) If there is a contest upon the decision of the Inspector concurring in the Local Master's opinion registration shall be delayed for ten days to enable anyone who so desires to appeal. 1 Geo. V. c. 28, s. 151.

Applications
for first
registration
in districts.

152. Until an Inspector is appointed applications for first registration in the Provisional Judicial Districts not coming within sections 159, 160 and 162 shall be made to the Master of Titles and not to the Local Master for the district, and upon the Master of Titles finding that an applicant is entitled to be registered he shall issue his certificate to that effect to the Local Master who shall thereupon register the land in accordance with the terms of such certificate. 1 Geo. V. c. 28, s. 152.

Exceptions to
application of
s.s. 151, 152.

153. Sections 151 and 152 shall not apply to applications coming within sections 159, 160 and 162, or to applications for a possessory title, or for the registration of leasehold land where the freehold or other estate out of which the lease is derived is registered land, or where a declaration of the title of the lessor to grant the lease is not required. 1 Geo. V. c. 28, s. 153.

Duty of
registrar of
district when
required to
forward docu-
ment of title
to Master.

154.—(1) Where an application is made under section 152 the Master of Titles may request the registrar of the registry division in which the land lies to transmit by registered post, or by express, any instrument appearing on the abstract, or required in connection with the application, which the Master desires to examine.

To keep
list of
documents
transmitted.

(2) The registrar shall comply with such request and shall, with such documents, send a list of all the documents transmitted and shall retain a copy of the list.

Return of
documents.

(3) The Master shall return the documents, as soon as practicable, by registered post or by express, sending therewith to the registrar a list of all the documents so returned and keeping a copy of the list.

Additional
fees to
registrar.

(4) The registrar, in addition to his usual fees for the production of a document, shall be entitled to an additional fee of ten cents for each document transmitted as compensation for his trouble in respect of such transmission, the preparation of the list and returning the documents to their proper files. 1 Geo. V. c. 28, s. 154.

Subsequent Registration.

155. If, on the application for the registration of an instrument after a first registration or for the registration of a transmission, the Local Master of Titles is unable to come to a clear conclusion as to the action which he should take he shall delay making the required entry until he has stated the facts to the Inspector for his opinion, and in submitting the case the Local Master shall state his own view and his reasons therefor. 1 Geo. V. c. 28, s. 155.

Submission of case to Inspector where Master in doubt.

INSPECTOR OF OFFICES OF LAND TITLES.

156.—(1) The Lieutenant-Governor in Council may appoint an officer to be called "The Inspector of Land Titles' Offices."Appointment of Inspector.

(2) The Inspector shall, subject to the rules, have the like powers and duties as an Inspector under *The Quieting Titles' Act*, and as an Inspector under *The Registry Act*, respectively, and such other duties as may be required of him by the rules, or as he may be required by the Lieutenant-Governor in Council to perform.

Rev. Stat. cc. 123, 124.

(3) The salary of the Inspector, his travelling expenses, and all expenses of and incidental to his office shall be paid by the Province, and shall be repaid to the Treasurer of Ontario by the corporations of the localities in which this Act is from time to time in operation in such proportions as, after a report from the Inspector, the Lieutenant-Governor in Council may determine. 1 Geo. V. c. 28, s. 156.

Salary.

157. Until an Inspector is appointed the duties of the Inspector shall be performed by the Master of Titles or by some other person authorized by the Lieutenant-Governor in Council, and the expenses of and incidental thereto shall, in like manner as is hereinbefore provided, be repaid to the Treasurer. 1 Geo. V. c. 28, s. 157.

Performance of duties until inspector appointed.

158. In all matters decided by the Inspector which are of like character as matters over which the Master of Titles has jurisdiction in the County of York an appeal shall lie from any act, order or decision of the Inspector to a Judge of the Supreme Court, and from him to a Divisional Court. 1 Geo. V. c. 28, s. 158.

Appeal from Inspector.

REGISTRATION OF NEWLY PATENTED LANDS IN DISTRICTS.

159.—(1) Where any land situate in a Provisional Judicial District is granted by letters patent or by order of the Lieutenant-Governor in Council the letters patent or a certified copy of the Order in Council shall be forwarded to the Local Master of Titles of the District for the purpose of the grantee being entered as the first registered owner of the land, with any necessary qualifications.

Letters Patent or Order in Council granting lands in certain districts, registration of.

Exemption
of certain
lands from
application of
subsection 1.

(2) Subsection 1 shall not apply to land covered with the waters of Lake Huron adjacent to the Great Manitoulin Island, Cockburn Island or Fitzwilliam Island, in the District of Manitoulin, or adjacent to any island which, in whole or in part, lies between headland and headland around such three Islands.

Where
notice of
caution or
adverse
claim
unnecessary.

(3) It shall not be necessary to issue a notice in respect of a caution or adverse claim which has been lodged if, by the certificate of the Minister or Deputy Minister of Lands, Forests and Mines, it appears that the claim in respect of which such caution or adverse claim was lodged was considered by the Minister and disposed of before the issue of the patent; and if before the receipt of such a certificate any proceedings have been taken by a Local Master in respect of such caution or adverse claim he shall thereupon discontinue the same and disallow any objection or claim founded thereon and make such order as to costs as he deems just.

Where no
contest.

Where
contest.

(4) Where there is no contest as to the rights of the parties the Local Master may make the requisite entry and issue his certificate; but in case of a contest he shall transmit the papers to the Inspector before registering the patentee as owner, and shall otherwise proceed as provided in section 151.

Where
cautioner
consents.

(5) Where the cautioner consents to the registration of the patentee the Local Master need not issue any notice on account of such caution.

Patents de-
mising lands
for term of
years declar-
ed within this
section.

(6) Letters Patent from the Crown demising land or mining rights for a term of years, or for any greater estate, granted on or after the 31st day of December, 1887, shall be deemed to have been and to be within the provisions of this section. 1 Geo. V. c. 28, s. 159.

Registration
of Dominion
patentees.

160. Where land situate in a Provisional Judicial District has been patented by the Government of Canada the Local Master of Titles shall have authority to register the patentee as owner of such land and may do so without submitting his finding upon the application to the Inspector for his concurrence. 1 Geo. V. c. 28, s. 160.

Notice by
Master to
sheriff.

161.—(1) Upon an entry of ownership being made the Local Master of Titles shall, in the prescribed form, notify the sheriff in whose bailiwick the land lies of the entry of the patentee as owner.

How notice
to be sent.
After what
time entries
may be made
in register.

(2) The notice shall be sent by registered post, and no entry of any dealing with the land shall be made in the register until fourteen days after the mailing of the notice, unless proof is previously made that the land is not liable to any execution.

(3) The sheriff, upon receipt of the notice, shall forthwith transmit to the Local Master a copy of any execution in his hands affecting the land of the patentee, and if within the fourteen days no copy of an execution against the land of the patentee is received from the sheriff, the Local Master may assume that the land is not subject to any execution and may enter subsequent dealings with the land accordingly; and as against such entry no claim shall afterwards be sustained in respect of an execution against the patentee.

Duty of sheriff on receipt of notice.
When Local Master may assume absence of any execution.

(4) Where the Local Master receives from the sheriff a copy of an execution affecting the land an entry thereof shall be made against the land and all dealings with it shall be subject to such execution. 1 Geo. V. c. 28, s. 161.

Entry where claim for taxes or copy of execution received.

162.—(1) Where a patent for land is forwarded to a Local Master of Titles, under section 159, and it is made to appear to him that the patentee since the date of the patent has transferred the land to some other person the transferee, or in case of a further transfer or transfers the ultimate transferee of the land, shall be entered as the first registered owner and shall be described as the transferee of the patentee or otherwise according to the fact.

Registration of transferee of patentee.

(2) Before entering a transferee as first registered owner the Local Master shall require evidence to be produced showing that there is no execution affecting the land. 1 Geo. V. c. 28, s. 162.

Evidence of no execution.

163. Where notices or other proceedings are necessary the Local Master shall be entitled to charge in addition to his disbursements the like fees as are payable to the Master of Titles in respect of similar proceedings. 1 Geo. V. c. 28, s. 163; 3-4 Geo. V. c. 18, s. 27 (3).

Fees payable to Local Master.

SECTION IX.

PROPERTY IN WATERS AND STREAMS.

CHAPTER 127.

An Act respecting Ferries.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Ferries Act*. 9 Edw. VII. c. 60, s. 1.

Issue and
duration of
licenses.

2. Save as herein otherwise provided every grant or license of ferry shall be by the Lieutenant-Governor under the Great Seal and shall not extend for a longer term than seven years at any one time. 9 Edw. VII. c. 60, s. 2.

Requisites to
issue.

3. Save as herein otherwise provided no ferry shall be leased by the Crown, nor shall any lease thereof be renewed or any license of ferry be granted by the Crown, except by public competition, and after notice of the time and place at which tenders will be received for the lease or license for such ferry inserted at least once in each of four consecutive weeks in the *Ontario Gazette*, and in one or more of the newspapers published in the county or district in which the ferry is situated, and to persons giving such security as the Lieutenant-Governor in Council may prescribe. 9 Edw. VII. c. 60, s. 3.

Limits of
ferries.

4. Except in the case of municipalities as hereinafter provided, where the limits to which the exclusive privilege of any ferry extends are not already defined, such exclusive privilege shall not be granted for a greater distance than one mile and a half on each side of the place at which the ferry is usually kept, but nothing herein shall invalidate or infringe upon any existing grant or right of ferry. 9 Edw. VII. c. 60, s. 4.

License for
ferry between
two municipi-
palities. .

5.—(1) Where a ferry is required over any stream or other water and the two shores are in different local municipalities

not in the same county, or one shore is in a city or town separated from a county and the other is in another municipality in the same county, the Lieutenant-Governor may grant a license to either of such municipalities exclusively, or to both jointly, or to either of the counties or to both jointly, or to one of the counties jointly with a city or town, as he may consider most conducive to the public interest.

Grantee.

(2) The license shall confer the right to establish a ferry from shore to shore on such stream or other water, with such limits and extent as may appear advisable to the Lieutenant-Governor in Council, and be expressed in the license.

Extent of right conferred, etc.

(3) The license shall be upon conditions as to the description of craft and motive power to be used and upon such further terms and conditions as the Lieutenant-Governor in Council may direct, and the terms and conditions shall be expressed in the license.

Conditions of license as to motive power and other matters.

(4) The council of the municipality may pass by-laws, not inconsistent with the terms of the license, for subletting the ferry to such person and upon such terms and conditions as the council may think fit.

Municipalities sub-letting ferries.

(5) Where a license is granted to two municipalities jointly no by-law of the council of one municipality shall have any force until a by-law has been passed in similar terms, as nearly as may be, by the council of the other municipality.

Concurrence of municipalities where joint license.

(6) The provision as to the duration of the license and the provisions of section 3 shall not apply to this section. 9 Edw. VII. c. 60, s. 5.

Application of certain provisions excluded.

6.—(1) The council of every township, town or village may pass by-laws for establishing and for maintaining and operating, and the council of every municipality, other than a county, may pass by-laws for licensing upon such terms and conditions as may be deemed proper and for regulating ferries between any two places in the municipality, or over any navigable waters in or upon the boundary of the municipality, and for establishing the rates of ferriage to be taken thereon; but no such by-law shall have effect until approved by the Lieutenant-Governor in Council.

Municipal by-laws to establish, operate and license ferries.

(2) The council of every county shall have the like power in regard to ferries between places which are both situate within the county but not within the same local municipality, provided that neither of such places is situate in a city or town separated from the county for municipal purposes.

Powers of county councils.

(3) Until the council exercises the powers conferred by this section the Lieutenant-Governor in Council may license and regulate such ferries and establish the rates of ferriage to be taken thereon. 9 Edw. VII. c. 60, s. 6.

Powers of Lieutenant-Governor in Council.

Granting
exclusive
privileges.

7. The council of any municipality may grant exclusive privileges in any ferry vested in the corporation of the municipality. 9 Edw. VII. c. 60, s. 7.

Right of
persons to keep
boats at ferry
for their
own use.

8. Any person may keep at a ferry a boat, vessel or other craft for his own private use, or may use, for the accommodation of himself or of his employer, his own or his employer's boat, vessel or craft to cross the river or stream on which the ferry is situate; but such privilege shall not be used for the purpose of taking, carrying or conveying any other person or property for hire, gain, reward or profit, or hope thereof, or directly or indirectly to enable any such other person to evade the payment of tolls at the ferry. 9 Edw. VII. c. 60, s. 8.

Penalty for in-
terfering with
licensed ferry-
man's rights.

9. If any person unlawfully interferes with any right or license of ferry by taking, carrying or conveying at any ferry across the stream or other water on which the same is situate any person, cattle, carriage or wares in any boat, vessel or other craft for hire, gain, reward, profit or hope thereof, or unlawfully does any other act or thing to lessen the tolls and profits of any lessee or licensee of the Crown of any such ferry, the offender shall incur a penalty not exceeding \$20 to be recovered under *The Ontario Summary Convictions Act* and to be paid to the person aggrieved. 9 Edw. VII. c. 60, s. 9.

Rev. Stat. c. 90.

CHAPTER 128.

An Act respecting Millers.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Millers Act*. 9 Edw. VII. Short title. c. 61, s. 1.

GRINDING GRAIN.

2. An owner or occupier of a mill, or a person employed by him, shall not demand or take as toll a greater proportion of any grain brought to him to be ground and bolted than one-twelfth part thereof for grinding and bolting the same, under a penalty of \$40 for every such offence. 9 Edw. VII. c. 61, s. 2.

Proportion to
to be taken as
toll for grind-
ing and bolt-
ing grain.

MARKING GRAIN BAGS.

3. An owner or occupier of a mill shall not be bound to receive or be chargeable with the loss of any bag of grain or flour unless the bag is marked with the initial letters of the Christian name and surname of the owner of the grain, or with some mark distinguishing the bag, which shall have been previously made known to the owner or occupier of the mill, or his servant usually attending the same. 9 Edw. VII. c. 61, s. 3.

Liability of
miller.
Marking bags.

CHAPTER 129.

An Act respecting Water Privileges.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Water Privileges Act*. 1 Geo. V. c. 29, s. 1.

Meaning of "occupied water privilege," etc.

2. In this Act "Occupied Water Privilege" shall mean a mill privilege, or water power, which has been or is in use for mechanical, manufacturing, milling or hydraulic purposes, or for the use of which for any of such purposes the necessary works are *bona fide* in course of construction. 1 Geo. V. c. 29, s. 2.

Protection of occupied water privilege.

3. Subject to the provisions of section 8 an occupied water privilege shall not be in any manner interfered with or encroached upon under the authority of this Act without the consent of the owner. 1 Geo. V. c. 29, s. 3.

Right of owner of water privilege to enter on and examine and survey lands.

4.—(1) A person desiring to use or improve a water privilege, of which or a part of which he is the owner or legal occupant, for any mechanical, manufacturing, milling or hydraulic purposes by erecting a dam and creating a pond of water, increasing the head of water in any existing pond or extending the area thereof, diverting the waters of any stream, pond or lake into any other channel, constructing any raceway or other erection or work which he may require in connection with the improvement and use of the privilege, or by altering, renewing, extending, improving, repairing or maintaining any such dam, raceway, erection or work, or any part thereof, shall have the right to enter upon any land which he may deem necessary to be examined and to make an examination and survey thereof, doing no unnecessary damage and making compensation for the actual damage done.

And after order by Judge to acquire lands for improving water privileges.

(2) If, upon an application to a Judge of the County or District Court, as hereinafter provided, such person obtains authority he may take, acquire, hold and use such portions of the land so examined or such rights over or in respect thereof as the Judge may deem necessary for the completion, improvement or maintenance of the water privilege and works in connection therewith. 1 Geo. V. c. 29, s. 4.

5.—(1) A person desiring to exercise the powers hereinbefore mentioned, or any of them, shall cause:—

Proceedings
for obtaining
the powers
given by
this Act.

(a) surveys and levels to be made and taken of the land sought to be taken, used or otherwise affected, and a map or plan thereof to be prepared;

(b) a statement to be prepared giving

(i) a general description of the land to be taken and of the powers intended to be exercised with regard to any land, describing them,

(ii) the names of the owners and occupiers of the land, so far as they can be ascertained, and

(iii) everything necessary for the right understanding of the map or plan, including a registrar's certified abstract of the titles to all the land to be affected by the application;

(c) the map or plan and the statement to be filed in the office of the clerk of the County or District Court of the county or district wherein the land or part thereof is situate.

(2) He may then apply to the Judge of such County or District Court for an order empowering him to exercise the powers or such of them as he may desire. 1 Geo. V. c. 29, s. 5.

Application
to Judge.

6. In addition to any other notice which the Judge may direct to be given public notice of the application stating the time and place when and where the same is to be heard, shall be inserted for such period as the Judge may direct in a newspaper published in the county or district or one of the counties or districts where the proposed works are to be constructed or any of the land affected is situate. 1 Geo. V. c. 29, s. 6.

Public notice
of applica-
tion.

7. If the Judge is of the opinion that the allowance of the application in whole or in part is in the public interest and is proper and just under all the circumstances of the case he may make an order empowering the applicant to exercise such of the powers as the Judge may deem expedient, for such time and on such terms and conditions as he may determine, and the land affected shall be described in the order. 1 Geo. V. c. 29, s. 7.

Order when
deemed proper
and just.

8. Where evidence is produced which satisfies the Judge that the owner of a water privilege which has been but is not then in use for any of the purposes mentioned in sub-

Order as to
privilege not
in actual use.

section 1 of section 4 is holding the same with the intention of again using it for mechanical, manufacturing, milling or hydraulic purposes the Judge may make an order fixing the time within which the necessary works for the actual use of such water privilege shall be constructed and actually used, and, unless such evidence is produced or the terms of such order are complied with, the water privilege shall not be deemed to be an occupied water privilege within the meaning of this Act. 1 Geo. V. c. 29, s. 8.

The case of two claiming the powers under this Act.

9. Where two or more persons claim to exercise the powers conferred by this Act in respect of the same water privilege, or any part thereof, the Judge may impose such terms as he may deem just, and may also limit a time within which the person whose application he allows shall construct the necessary works and actually use such water privilege. 1 Geo. V. c. 29, s. 9.

Limit of size of ponds.

10. No pond shall be authorized to be made or enlarged so as to exceed twenty acres in extent unless the Judge for special reasons otherwise directs. 1 Geo. V. c. 29, s. 10.

What to be stated in order.

11.—(1) The Judge shall in the order state the height to which the water may be raised and fix the extent of the pond.

Compensation for injury.

(2) The Judge shall also assess the sum to be paid as the value of the land to be taken or used or of the powers to be exercised, and the damages, if any, to be paid as compensation by the applicant for any injury which may be occasioned by the proposed works, and may make such order as to costs as he may deem just.

Costs.

Scale and taxation.

(3) The costs shall be the same as in ordinary proceedings in the County Court and shall be taxed by the clerk. 1 Geo. V. c. 29, s. 11.

Payment of amount awarded.

12.—(1) The sums so assessed and the costs shall be paid to the persons entitled thereto, or into the Supreme Court, as the Judge may direct, before the powers or any of them are exercised and within sixty days after the order is made.

Enforcing or setting aside order. Rev. Stat. c. 79.

(2) If the same are not so paid the order may be enforced under *The Judges' Orders Enforcement Act*, or, at the option of any of the persons entitled to receive a sum so assessed, may, on application to the Judge, be set aside and vacated as to him, and in such case the Judge may make such order as to the costs of the proceedings and of the application as he may deem just. 1 Geo. V. c. 29, s. 12.

Conveyance of the land.

13. Upon the payment of the sums assessed and costs the applicant shall be entitled to a conveyance, to be settled by the Judge in case of dispute, of the land or rights mentioned in the order in respect of which payment is so made, and

shall be further entitled to have and exercise such of the powers mentioned in section 4 as he is authorized by the order to exercise. 1 Geo. V. c. 29, s. 13.

14. For the purpose of registration the order shall be deemed a judgment of the court to which the Judge belongs. Registration of Judge's order. 1 Geo. V. c. 29, s. 14.

15. The Judge shall have all the powers possessed by him or by a County or District Court in an action. Judge's powers. 1 Geo. V. c. 29, s. 15.

16. The Judge shall be entitled for his services to the like fees as are allowed to professional arbitrators. Judge's fees. 1 Geo. V. c. 29, s. 16.

17.—(1) By leave of a Judge of the Supreme Court an appeal shall lie from the final order of the Judge on any application under this Act to a Divisional Court. Appeal from County Judge.

(2) On such appeal the decision of the Judge upon questions of fact and all other questions shall be open to review. Review of decision.

(3) The application for leave to appeal shall be made within ten days from the day on which the order appealed from is made, or within such further time as a Judge of the Supreme Court may allow. Application for leave to appeal.

(4) The Judge to whom the application is made shall determine the time within which the appeal shall be set down to be heard, the persons upon whom notice of the appeal shall be served and all such other matters as he may deem necessary for the most speedy and least expensive determination of the appeal. Terms.

(5) If the appeal is not set down to be heard within the time limited, or if any other condition imposed is not complied with, the appeal shall, unless otherwise ordered by a Judge of the Supreme Court, be deemed to have been abandoned. Effect of non-compliance with conditions of appeal.

(6) The practice and procedure upon the appeal, except so far as is herein, or by the Judge to whom the application for leave is made, otherwise provided, shall be the same as upon an appeal from a County Court. Practice on appeal. 1 Geo. V. c. 29, s. 17.

18. No work shall be constructed under the authority of this Act in contravention of the provisions of *The Rivers and Streams Act*. Effect of Rev. Stat. c. 130. 1 Geo. V. c. 29, s. 18.

CHAPTER 130.

An Act for protecting the Public Interest in Rivers, Streams and Creeks, and respecting Dams and other Works thereon.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PRELIMINARY.

- Short title. **1.** This Act may be cited as *The Rivers and Streams Act*.
3-4 Geo. V. c. 26, s. 1.
- Interpreta- **2.** In this Act,
tion.
- “Regula- (a) “Regulations” shall mean regulations made by the
tions.” Lieutenant-Governor in Council under the author-
ity of this Act;
- “River.” (b) “River” shall include creek and stream;
- “Timber.” (c) “Timber” shall include saw logs and timber of every
kind and masts, staves, deals, boards and other
sawed or manufactured lumber. 3-4 Geo. V. c. 26,
s. 2.

PUBLIC RIGHTS IN RIVERS.

- Right to **3.—(1)** All persons shall have the right to and may, sub-
use rivers ject to the provisions of this Act, during the spring, summer
for floating and autumn freshets, float and transmit timber, rafts and
down tim- crafts down all rivers.
ber, etc.
- Duty not (2) No person shall, by felling trees or placing any other
to obstruct. obstruction in or across any river, prevent the passage of
timber, rafts or crafts.
- Right to (3) If it is necessary to remove any obstruction from such
remove river, or to construct any dam, apron, slide, gate, lock, boom
obstructions or other work therein or thereon in order to facilitate the
and to floating and transmitting of timber, rafts or crafts down the
construct river, the person requiring so to float and transmit the same
works. may remove such obstruction, and may construct such dam,
apron, slide, gate, lock, boom or other work, doing no unneces-
sary damage to the river or to its banks.

(4) All persons driving timber, rafts or crafts down a river shall have the right to go along the banks of the river for the purpose of assisting and to assist the passage of the timber, rafts or crafts by all means usual with lumbermen, doing no unnecessary damage to the banks of the river. 3-4 Geo. V. c. 26, s. 3.

Right of persons driving timber, etc., to go on river banks.

4. Where there is a convenient apron, slide, gate, lock or opening in any dam or other structure in or upon the bed of or across a river for the passage of timber, rafts and crafts authorized to be floated down the river no person using the river in manner and for the purposes mentioned in section 3 shall alter, injure or destroy such dam or other structure or do any unnecessary damage to it or to the banks of the river. 3-4 Geo. V. c. 26, s. 4.

Duty not to injure dams, etc.

OBSTRUCTIONS IN RIVERS.

5.—(1) Every person who cuts and fells, and the employer of every person who cuts and fells any tree into any river down which timber is usually floated or transmitted, or upon such parts of the banks of it as are usually overflowed in the spring, summer or autumn by the rising of the water, without lopping off the branches of such tree and cutting up the trunk into lengths of not more than eighteen feet before the tree is allowed to be floated or cast into the river shall for every such offence incur a penalty not exceeding \$10.

Conditions on which timber may be cut on the banks and floated thereon.

(2) Subsection 1 shall not apply to timber prepared for transportation to market. 3-4 Geo. V. c. 26, s. 5.

Exception.

6.—(1) No person shall throw, and no owner or occupier of a mill shall suffer or permit to be thrown, into any river slabs, bark, waste stuff or other refuse of any saw-mill, except saw dust, or stumps, roots, shrubs, tan-bark or waste wood, or leached ashes; and no person shall fell or cause to be felled into or across such river any timber or tree and allow it to remain in or across such river.

Duty not to throw trees, slabs, etc., into rivers.

(2) For every contravention of subsection 1 the person offending shall incur a penalty not exceeding \$20 and not less than twenty cents for each day during which the obstruction continues, over and above all damages arising therefrom.

Penalty.

(3) Where damage to private property is caused by a contravention of this Act the damages may, at the request of the person aggrieved, be assessed by the convicting magistrate and included in the conviction when such damages together with the penalty imposed do not exceed \$20.

When damages may be assessed.

(4) Where damages are so assessed the same shall be paid to the person aggrieved.

And paid to person aggrieved.

Exception.

(5) This section shall not apply to the River St. Lawrence or the River Ottawa.

As to obstructions not wilful.

(6) No such obstruction happening without the wilful default of the person by whom it is caused, or in the *bona fide* exercise of his rights, shall subject him to the penalty unless he makes default in removing the obstruction after notice and reasonable time afforded for that purpose. 3-4 Geo. V. c. 26, s. 6.

Section 6 not to extend to dams, weirs or trees used as bridges.

7. Section 6 shall not apply to a dam, weir or bridge erected in, across or over a river, or to anything done *bona fide* in or for erecting the same, or to any tree cut down or felled across such river for the purpose of being used as a bridge from one side of it to the other, if such dam, weir, bridge or tree does not impede the flow of water or the passing of timber, rafts and crafts. 3-4 Geo. V. c. 26, s. 7.

REMOVAL OF WORKS BY ORDER OF MINISTER OF PUBLIC WORKS.

Removal of rocks, etc., by order of Minister of Public Works.

Rev. Stat. c. 35.

8.—(1) Subject to compensation being made as provided by *The Ontario Public Works Act* the Minister of Public Works may authorize any engineer, agent, workman or servant employed by or under him to enter into and upon any land and remove any work in any river, to whomsoever belonging other than to Canada, the removal of which in the judgment of the Minister is necessary or expedient in the public interests, and the provisions of that Act shall apply to the powers conferred by this section.

Act not to apply to land of Canada, etc.

(2) Nothing in this section shall apply to any land or to any obstruction on any land belonging to Canada, or to any work or materials ordered or approved by the Lieutenant-Governor in Council, or where municipal authority exists to remove the obstruction.

Meaning of "Work."

(3) In this section "work" shall mean and include any rocks, stones, gravel, slab or timber jam, dam, or part of any dam, rubbish of any kind or other obstruction. 3-4 Geo. V. c. 26, s. 8.

TOLLS.

Right of public to use rivers and improvements.

9. A person who has constructed in or upon a river, which was not navigable or floatable before the same were constructed, any dam, apron, slide, gate, lock, boom or other work necessary to facilitate the floating or transmission of timber, rafts and crafts down such river, or blasts rocks or removes shoals or other impediments from or otherwise improves the floatability of the river, shall not have the exclusive right to the use of the river or to the works or improvements, but all persons, subject to the payment to the person who constructed the works or made the improvements of rea-

sonable tolls, shall have the right during the spring, summer and autumn freshets to float and transmit timber, rafts and crafts down such river and through and over such works and improvements, doing no unnecessary damage to them or to the banks of the river. 3-4 Geo. V. c. 26, s. 9.

10. Sections 3 to 14 and all the rights conferred by them shall extend and apply to all works and improvements made, whether before or after the passing of this Act, on any river, whether the bed of the river or the land through which it runs has been granted by the Crown or not, and, if granted by the Crown, shall be binding upon the grantees, their heirs, executors, administrators and assigns. 3-4 Geo. V. c. 26, s. 10.

Act to apply whether land patented or not.

11.—(1) A Judge of the County or District Court of the county or district in which the works or improvements are situate shall, upon the application of the owner thereof or of any person who desires to use the same, fix the amounts which any person entitled to tolls under this Act shall be at liberty to charge, and may from time to time vary such amounts, except where the tolls are fixed by charter of incorporation of the Government of Canada, or by any Act of the Parliament of Canada or of this Legislature.

Judge of County or District Court may fix tolls.

(2) In fixing the tolls the Judge shall have regard to and take into consideration the original cost of the works and improvements, the amount required to maintain them and to cover interest upon the original cost, as well as such other matters as under all the circumstances may be deemed just and equitable. 3-4 Geo. V. c. 26, s. 11.

Basis on which tolls to be fixed.

12.—(1) Any person interested who is dissatisfied with the order of the Judge may within fifteen days from the date thereof appeal therefrom to a Divisional Court.

Appeal.

(2) A Judge of the Appellate Division may fix and determine the time within which the appeal is to be set down to be heard, the security, if any, to be given by the appellant, and the persons upon whom notice of the appeal shall be served, the manner of service, and all such other matters as he may deem necessary for the most speedy and least expensive determination of the appeal, and except in so far as any of such matters have not been otherwise fixed and determined the practice and procedure relating to the appeal shall be that applicable to appeals from a County Court. 3-4 Geo. V. c. 26, s. 12.

Practice and procedure on appeal.

13.—(1) A person entitled to tolls under this Act shall have a lien upon the timber passing through or over such works or improvements for the amount of the tolls, ranking next after the lien of the Crown for dues in respect of the timber.

Lien of person entitled to tolls.

Seizure of
timber for
tolls.

(2) If the tolls are not paid any justice of the peace having jurisdiction within or adjoining the locality in which the works or improvements are situate, upon the oath of the owner of the works or improvements or of his agent being made that the just tolls have not been paid, shall issue a warrant for the seizure of such timber or so much of it as he may deem sufficient to satisfy the tolls.

Warrant to
seize and
proceedings
thereon.

(3) The warrant may be directed to any constable or to any person sworn as a special constable for that purpose at the discretion of the justice, and it shall authorize the person to whom it is directed, if the tolls are not paid within 14 days from the date of the warrant, to sell the timber subject to any lien of the Crown for dues, and out of the proceeds to pay such tolls, together with the cost of the warrant and sale, rendering the surplus on demand to the owner.

When war-
rant not to
be issued.

(4) A warrant shall not be issued after the expiration of one month from the time of the passage of the timber through or over any of the works or improvements. 3-4 Geo. V. c. 26, s. 13.

Rules by
person entitled
to tolls.

14. Every person entitled to tolls under this Act may make rules for regulating the safe and orderly transmission of timber, rafts and crafts over or through the works or improvements; but no such rules shall have any force or effect until approved by the Lieutenant-Governor in Council, and the Lieutenant-Governor in Council may revoke and cancel any rules so made and approved, and from time to time approve of new rules which the person entitled to tolls may make. 3-4 Geo. V. c. 26, s. 14.

Right of
certain
companies,
etc.,
not affected.
Rev. Stat.
c. 181.

15. Nothing in sections 3 to 14 shall affect the powers or rights of any company formed under *The Timber Slide Companies' Act*, or mill-dams, or the right to erect and maintain mill-dams on rivers, or any other law conferring rights in mill-dams. 3-4 Geo. V. c. 26, s. 15.

SPECIAL PROVISIONS AS TO RIVER OTTAWA AND ITS TRIBUTARIES.

Right to
injunction
against
owners of
mills on the
Ottawa
waters
restricted.

16.—(1) Where in an action or other proceeding a person claims, and but for this section would be entitled to, an injunction against the owner or occupier of a saw-mill situate on or near the River Ottawa or any of its tributaries for any injury or damage, direct or consequential, sustained by such person, or for any interference directly or indirectly with any rights of such person as riparian proprietor or otherwise, by reason or in consequence of the throwing or depositing of any sawdust or other mill refuse from the saw-mill or from it and other saw mills into that river or its tributaries, the Court or Judge may refuse to grant an injunction if it is proved that having regard to all the circumstances, and taking into consideration the importance of the lumber trade to the locality in which the injury, damage or

interference takes place, and the benefit and advantage, direct and consequential, which such trade confers on that locality and on the inhabitants of it, and weighing the same against the private injury, damage or interference complained of, it is on the whole proper and expedient not to grant the injunction, or the Court or Judge may

(a) grant an injunction to take effect after such lapse^{Injunction on terms.} of time or upon such terms and conditions or subject to such limitations or restrictions as may be deemed proper;

(b) in lieu of granting an injunction, direct the person^{Or} against whom the injunction is claimed to take^{measures ordered to} such measures or perform such acts to prevent^{avoid,} avoid, lessen or diminish the injury, damage or^{lessen or diminish the injury.} interference complained of as may be deemed proper.

(2) Nothing in subsection 1 shall affect any right of the^{Right to damages} person claiming the injunction to damages against the owner^{not affected.} or occupier of the saw mill for any such injury, damage or interference.

(3) Where damage from the same cause continues the^{Assessment of subsequent damages.} person entitled to the damages may apply from time to time in the same action for the assessment of subsequent damages or for any other relief to which by subsequent events he may from time to time become entitled.

(4) This section shall apply whether the injury, damage^{Application of section.} or interference is or is not a continuing one, and whether the person claiming the injunction is a plaintiff in the action or other proceeding, or is a defendant proceeding by way of counter-claim.

(5) This section shall not apply where, in the opinion of^{Exception.} the Court or Judge, the injury, damage or interference complained of is of such a nature that it cannot be adequately compensated for by the awarding of damages. 3-4 Geo. V. c. 26, s. 16.

DAMS.

17.—(1) The Lieutenant-Governor in Council may make^{Regulations as to slides and aprons.} regulations as to the description and dimensions of the aprons or slides which are to be provided for or in connection with dams by the owners and occupiers of them, and such other regulations as to the mode of constructing dams, the provisions to be made in or in connection with them for the passage of timber, rafts and crafts, and otherwise as he may deem necessary to prevent the reasonable use of the river for the passage of timber, rafts and crafts being impeded or interfered with.

Effect upon provisions of ss. 19 to 23.

(2) The provisions of sections 19 to 23 as to the width of aprons and the mode of constructing them may be abrogated or varied by the Regulations. 3-4 Geo. V. c. 26, s. 17.

Dams to be provided with slides or aprons for the passage of timber.

18. Where a dam is now or shall hereafter be erected on or across any river down which timber is usually brought such dam shall at all times be provided with a slide or apron for the passage of the timber, rafts and crafts of such description and dimensions as shall be prescribed by the Regulations. 3-4 Geo. V. c. 26, s. 18.

Description of apron to be provided in the absence of regulations.

19. Subject to sections 22 and 23, unless and until otherwise provided by the Regulations, every such apron shall be not less than eighteen feet wide by an inclined plane of twenty-five feet to a perpendicular of six feet, and so in proportion to the height where the width of the river will admit of it, and if the river or the dam is less than fifteen feet wide the whole dam shall be aproned in like manner with the same inclined plane. 3-4 Geo. V. c. 26, s. 19.

Apron to be on main channel, etc.

20. Every such apron shall be constructed on the main channel of the river, and its highest part shall be one foot below the level of the dam at the place where it joins the dam. 3-4 Geo. V. c. 26, s. 20.

Apron to admit of timber passing.

21.—(1) Every such apron shall be so constructed and maintained as to afford depth of water sufficient to admit of the passage over it of such timber as is usually floated down the river on which the dam is erected.

Waste-gates and brackets and slash boards.

(2) The owner or occupier of the dam may construct a waste-gate or put up brackets and slash boards in, upon and across the apron for the purpose of preventing the unnecessary waste of water, and may keep the waste-gate closed when no person is ready and requires to pass or float any timber, rafts or crafts over the apron, and shall not be bound to remove the brackets or slash boards until the timber, rafts or crafts required to be passed or floated are ready to pass and have for that purpose gained the main channel of the river. 3-4 Geo. V. c. 26, s. 21.

When to be opened or removed.

Dams on River Moira and tributaries.

22.—(1) On the River Moira and its tributaries the apron shall be at least thirty-two feet in width if the dam is of that or of a greater width, and if it is not then of the width of the dam and at least five feet in length for every one foot rise of the dam.

Height of dam.

(2) The dam where the apron is constructed shall be at least two feet lower than the top of the dam at any other place unless it occupies the whole width of the dam, but if the rise of the dam is less than four feet the height of it at the place where the apron is constructed shall not exceed one-half its height at any other place. 3-4 Geo. V. c. 26, s. 22.

23. On the River Otonabee the apron shall not be less than thirty-two feet wide by an inclined plane of five feet to a perpendicular height of one foot, and so in proportion to the height of the dam, and side pieces at least one foot in height shall be fixed on the outside of the apron to confine the water and prevent the timber from falling off at the sides. 3-4 Geo. V. c. 26, s. 23.

Dams on
River
Otonabee.

24. The Lieutenant-Governor in Council may, as to any dam, reduce the width of the apron and the specifications as to the inclined plane prescribed by sections 19 to 23. 3-4 Geo. V. c. 26, s. 24.

Reducing
width of,
and speci-
fications.

25.—(1) The owner and occupier of a dam who does not provide, maintain and keep in repair an apron thereto in accordance with the provisions of sections 19 to 23, or of the Regulations, shall incur a penalty of \$20 for every day on which the default occurs or during which it continues.

Penalty
for not
providing
apron.

(2) Where the apron is carried away, destroyed or damaged by flood or otherwise the owner or occupier of the dam shall not be liable to the penalty provided by subsection 1 if the apron is repaired or reconstructed in conformity with this Act and the Regulations as soon as the state of the river safely permits. 3-4 Geo. V. c. 26, s. 25.

Where apron
carried away
penalty
suspended.

26. Where land is overflowed or otherwise injured by the maintenance of a dam which was erected before the land was granted by the Crown, and the grantee or any person under whom he derived title obtained a reduction in the price of the land on account of, or was otherwise indemnified for, its being overflowed or otherwise injured by the dam no subsequent owner of the land shall be entitled to maintain an action against the owner or occupier of the dam for damages for any overflowing or injury to the land due to the continuance of the dam. 3-4 Geo. V. c. 26, s. 26.

Where com-
pensation
for flooding
or injury by
dam made
before grant
from the
Crown no
liability for
continuance
of the dam.

REGULATION OF USE OF WATER.

27. Where a dam, weir or other structure or work for the creation, development or improvement of a water power on any river down which any timber is floated or for the utilization of such water power has been heretofore or shall hereafter be constructed the Lieutenant-Governor in Council may make such regulations as he may deem expedient respecting the use of the river or of the waters of it, or of any water which is or is intended to be stored by means of any such dam, weir, structure or work by the owners and occupiers of it, or of any work operated wholly or partly by the power so created, developed or improved and by persons using the river for the purpose of floating or transmitting timber. 3-4 Geo. V. c. 26, s. 27.

Regulation
of use of
water by
owners of
power and
persons
floating
timber.

REGULATIONS AS TO TRANSMISSION OF TIMBER, ETC.

Regulations
as to trans-
mission of
timber.

28. The Lieutenant-Governor in Council may make such regulations as he may deem necessary for the safe and orderly transmission of timber, rafts and crafts down rivers, and for preventing the use of the river for the purpose of navigation by vessels and boats being unnecessarily impeded or interfered with by the timber, rafts and crafts. 3-4 Geo. V. c. 26, s. 28.

Scope of
regulations.

29. Regulations made by the Lieutenant-Governor in Council under the authority of this Act may

(a) prescribe penalties for the contravention of them;

(b) be general in their application or be applicable to any particular river or to any particular dam.
3-4 Geo. V. c. 26, s. 29.

RECOVERY OF PENALTIES.

Recovery
of penalties.
Rev. Stat. c. 90.

30. The penalties imposed by or under the authority of this Act or of the Regulations shall be recoverable under *The Ontario Summary Convictions Act*. 3-4 Geo. V. c. 26, s. 30.

Laying
Regulations
before
Assembly.

31. All Regulations made under the authority of this Act shall be laid before the Assembly forthwith if the Assembly is then in session, and if the Assembly is not in session within the first fifteen days after the opening of the next session thereafter. 3-4 Geo. V. c. 26, s. 31.

CHAPTER 131.

An Act respecting the Driving of Saw Logs and other Timber on Lakes, Rivers, Creeks and Streams.

THIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Saw Logs Driving Act*. Short title.
R.S.O. 1897, c. 143, s. 1.

2. In this Act,

Interpretation.

(a) "Logs" shall include saw logs, timber, posts, ties, "Logs."
cordwood and other things being parts of trees.

(b) "Water" shall mean and include lakes, ponds, "Water."
rivers, creeks and streams in Ontario. R.S.O.
1897, c. 143, s. 2.

3. Any person putting or causing to be put logs into any water for the purpose of floating the same in, upon or down such water shall make adequate provision and put on a sufficient force of men to break, and shall make all reasonable endeavours to break, jams of such logs and clear the logs from the banks and shores of such water with reasonable despatch, and shall run and drive the same so as not unnecessarily to delay or hinder the removal, floating, running or driving of other logs, or unnecessarily to obstruct the floating or navigation of such water. R.S.O. 1897, c. 143, s. 3.

Duty of persons floating logs in river, etc., not to obstruct floating of navigation.

4. If any person neglects to comply with the provisions of the next preceding section it shall be lawful for any other person desiring to float, run or drive logs in, upon or down such water, and whose logs would be obstructed by such jams, to cause them to be broken and the logs to be cleared from the banks and shores of such water, and to be floated, run and driven in, upon or down the same. R.S.O. 1897, c. 143, s. 4.

Right of other persons obstructed to clear river, etc.

5.—(1) The person who causes such jams to be broken or logs to be cleared, floated, run or driven, pursuant to the next preceding section, shall do the same with reasonable economy and despatch; and shall take reasonable care not to leave logs on the banks or shores, and shall have a lien upon the logs in the jam or upon the logs so cleared, floated, run or driven for the reasonable charges and expenses of breaking the jams and the clearing, floating, running, driv-

Duty of persons clearing obstruction to use due care.
Lien.

ing, booming and keeping possession of such logs, and may take and keep possession of the same or so much thereof as may be reasonably necessary to satisfy the amount of such charges and expenses pending the decision by arbitration as hereinafter provided.

Idem.

(2) The person taking possession of logs under this section shall use all reasonable care not to take such logs beyond the place of their original destination, if known, but may securely boom and keep possession of the same at or above such place.

Notifying owner.

(3) The owner or person controlling such logs, if known, shall be forthwith notified of their whereabouts; and if satisfactory security is given for the amount of such charges and expenses possession of the logs shall be given up. R.S.O. 1897, c. 143, s. 5.

Provision when logs of several owners cannot conveniently be separated.

6. When logs of any person upon or in any water or the banks or shores of such water are so intermixed with logs of another person, that the same cannot be conveniently separated for the purpose of being floated in, upon or down such water, the several persons owning or controlling the intermixed logs shall respectively make adequate provision and put on a fair proportion of the men required to break jams of such intermixed logs, and to clear the same from the banks and shores of such water with reasonable despatch, and to float, run and drive the same in, upon or down such water; and the costs and expenses thereof shall be borne by the parties in such proportions as they may agree upon, and in default of agreement as may be determined by arbitration as hereinafter provided. R.S.O. 1897, c. 143, s. 6.

Provision when owner of any portion of logs is in default.

7. If any person neglects to comply with the provisions of the next preceding section it shall be lawful for any other person whose logs are intermixed to put on a sufficient number of men to supply the deficiency and break jams of such intermixed logs and to clear the same from the banks and shores of such water, and to float, run and drive all such intermixed logs in, upon or down such water. R.S.O. 1897, c. 143, s. 7.

Lien on logs.

8.—(1) The person supplying such deficiency and causing such jams to be broken, or such intermixed logs to be cleared, floated, run or driven, pursuant to the next preceding section, shall do the same with reasonable economy and despatch, and shall take reasonable care not to leave logs on the banks or shores, and shall have a lien upon the logs owned or controlled by the person guilty of such neglect for a fair proportion of the charges and expenses of breaking the jams, and the clearing, floating, running, driving, booming, and keeping possession of such intermixed logs; and may take and keep possession of such logs or so much thereof as may be reasonably necessary to satisfy

the amount of such fair proportion of charges and expenses pending arbitration as hereinafter provided.

(2) The person taking possession of logs under this section shall use all reasonable care not to take such logs beyond the place of their original destination, if known, but may securely boom and keep possession of the same at or above such place. Duty of holder.

(3) The owner or person controlling such logs, if known, shall be forthwith notified of their whereabouts, and if satisfactory security is given for the amount of such proportion of charges and expenses possession of the logs shall be given up. R.S.O. 1897, c. 143, s. 8. Notifying owner.

9. When logs of any person upon or in any water or the banks or shores of such water are intermixed with logs of another person any of the persons whose logs are intermixed may at any time during the drive require his logs to be separated from the other logs at some suitable and convenient place, and after such separation he shall secure the same at his own cost and expense in such manner as to allow free passage for such other logs; but when any logs reach their place of original destination, if known, so intermixed the same shall be separated there from the other logs, and after such separation each owner shall secure the same at his own cost and expense. R.S.O. 1897, c. 143, s. 9. Right of owner to separation of logs.

10. The several persons owning or controlling the intermixed logs shall respectively make adequate provisions and put on a fair proportion of the men required to make the separation; the cost and expense of such separation shall be borne by the parties in such proportions as they may agree upon, and in default of agreement as may be determined by arbitration as hereinafter provided. R.S.O. 1897, c. 143, s. 10. Expenses of separation to be shared.

11.—(1) If any person neglects to comply with the provisions of the next preceding section it shall be lawful for any other person whose logs are intermixed to put on a sufficient number of men to supply the deficiency, and the logs owned by or controlled by the person guilty of such neglect shall be subject to a lien in favour of the person supplying the deficiency for a fair proportion of the charges and expenses of making the separation, and for the reasonable charges and expenses of booming and keeping possession, and such person may take and keep possession of such logs or so much thereof as may be reasonably necessary to satisfy the amount of such fair proportion of charges and expenses pending arbitration as hereinafter provided. Provision when owner does not provide for his share of work.

(2) The person taking possession of logs under this section shall use all reasonable care not to take such logs beyond the place of their original destination, if known, but may Duty of holder.

securely boom and keep possession of the same at or above such place.

Notifying owner.

(3) The owner or person controlling such logs, if known, shall be forthwith notified of their whereabouts, and if satisfactory security is given for the amount of such proportion of charges and expenses possession of the logs shall be given up. R.S.O. 1897, c. 143, s. 11.

Form of security.

12. The security referred to in sections 5, 8 and 11 may be by bond, Form 1, or by deposit of money, or in such other way as the parties may agree upon. R.S.O. 1897, c. 143, s. 12.

Damages when logs wrongfully detained.

13. If it is determined by arbitration that any person acting under the assumed authority of this Act has without just cause taken possession of or detained or caused to be taken possession of or detained logs of another person, or has after offer of security which the arbitrators may think should have been accepted detain such logs, or has through want of reasonable care left logs of another person on the banks or shores, or has taken logs of another person beyond the place of their original destination contrary to the provisions of sections 5, 8 or 11, such first mentioned person shall pay to such last mentioned person such damages as the arbitrators may determine. R.S.O. 1897, c. 143, s. 13.

Lien under ss. 5, 8, and 11, subject to lien for tolls.

14. The lien given by sections 5, 8 and 11 shall be subject to the lien, if any, of any person for tolls or dues for the use of any works or improvements made use of in running or driving logs. R.S.O. 1897, c. 143, s. 14.

Rights of Crown not affected.

15. Nothing in this Act shall affect the liens or rights of the Crown upon or in respect of any logs. R.S.O. 1897, c. 143, s. 15.

Arbitration.

16. All claims, disputes and differences arising under this Act shall be determined by arbitration and not by action. R.S.O. 1897, c. 143, s. 16.

Appointment of arbitrator by claimant.

17.—(1) The person claiming that another person has not complied with the provisions of this Act, or claiming payment of any charges or expenses under this Act, or claiming a lien upon any logs, or claiming damages under section 13, shall give to such other person notice in writing stating the substance of the claims made and appointing an arbitrator, and calling upon such other person to appoint an arbitrator within ten days after the service of the notice.

Idem on behalf of respondent.

(2) If such other person does not within the ten days appoint an arbitrator the Judge of the County or District Court of the county or district, as the case may be, in which the logs in connection with which the claim or part of the claim is made, or the greater part of the logs are situate at

the time of the service of the notice shall, on the application of the person giving the notice, appoint a second arbitrator.

(3) The two arbitrators so appointed shall within ten days after the appointment of the second arbitrator appoint a third; and in default of their doing so the Judge shall, on the application of either party, appoint the third arbitrator. ^{Third arbitrator.} R.S.O. 1897, c. 143, s. 17.

(4) If at the time of the service of the notice the greater part of the logs has been cut into lumber or has been sold or removed from the last county or district in which they were driven, and the person notified does not within the ten days appoint an arbitrator a Judge of the Supreme Court shall, on the application of the person giving the notice, appoint a second arbitrator, and if the two arbitrators do not within the said period of ten days appoint a third any such Judge shall, on the application of either party, appoint the third arbitrator. ^{Where logs have been cut into lumber or sold.} 1 Edw. VII. c. 17, s. 1, *amended*.

18. If an arbitrator refuses to act or becomes incapable of acting or dies, and the parties do not concur in appointing a new arbitrator, the Judge of the County or District Court of such county or district or a Judge of the Supreme Court, as the case may be, shall, on the application of either party, appoint a new arbitrator. ^{Appointment of new arbitrators.} R.S.O. 1897, c. 143, s. 18; 1 Edw. VII. c. 17, s. 3, *amended*.

19. The parties may agree that the arbitration shall be by one arbitrator instead of by three, and in that event, if the arbitrator is not also agreed upon, either party may apply to the Judge of the County or District Court of such county or district or to a Judge of the Supreme Court to appoint one. ^{Single arbitrator by agreement.} R.S.O. 1897, c. 143, s. 19; 1 Edw. VII. c. 17, s. 3, *amended*.

20. The person on whom a claim is made and notice of arbitration served, at any time before the arbitration is entered upon or with leave of the arbitrators during the arbitration, may give the claimant notice in writing by way of counterclaim, stating the substance of any claim arising under this Act which such person may have against the claimant, and such counterclaim, unless barred under section 27, shall be determined in the arbitration and an award made with respect thereto. ^{Counterclaim.} R.S.O. 1897, c. 143, s. 20.

21.—(1) The three arbitrators or the sole arbitrator, as the case may be, shall make their or his award in writing under their or his hand within thirty days from the date of the appointment of such arbitrator, or the last of such three arbitrators, as the case may be. ^{Time within which award to be made.}

(2) The parties may, by consent in writing, from time to time enlarge the time for making the award, or such Judge or a Judge of the Supreme Court may from time to time, ^{Enlargement.}

either before or after the expiration of such time, enlarge the time for making the award. R.S.O. 1897, c. 143, s. 21; 1 Edw. VII. c. 17, s. 3, *amended*.

Witnesses and evidence.

22.—(1) The arbitrators or arbitrator may require the personal attendance and examination upon oath of the parties and their witnesses and the production of all books and documents relating to the matters in question, and may determine by whom the expense of the arbitration and the costs of the parties shall be paid, and the amount thereof.

Authority as to costs.

Costs.

(2) Any costs or expenses payable to a person having a lien upon logs by virtue of this Act shall be added to the amount of such lien. R.S.O. 1897, c. 143, s. 22.

Application of Rev. Stat. c. 65.

23. Sections 18 to 27 inclusive of *The Arbitration Act* shall apply to arbitrations under this Act. R.S.O. 1897, c. 143, s. 23.

Sale by person having lien.

24.—(1) The person having a lien upon logs by virtue of this Act may sell such logs or a sufficient part thereof in order to realize the amount of such lien, and of the costs, charges and expenses connected with the sale.

Direction by arbitrators.

(2) The arbitrators or arbitrator shall determine either by the award or by a separate document the time, place and manner of such sale, and may from time to time give directions in writing respecting such sale, and the realization of such lien and of the costs, charges and expenses connected therewith. R.S.O. 1897, c. 143, s. 24.

Finality of award.

25. The award and directions in writing of any two of the three arbitrators or of the sole arbitrator, as the case may be, shall be final and without appeal and shall be binding upon and shall be obeyed by the parties, and shall be valid notwithstanding any want or defect of form or other technical objection. R.S.O. 1897, c. 143, s. 25.

Compelling attendance of witnesses and production of documents.

26. The Judge of the County or District Court or a Judge of the Supreme Court, as the case may be, may on the application of either party order any person to attend and give evidence upon the arbitration and to produce all books and documents relating to the matters in dispute, and obedience to his order may be enforced in the same way as obedience to an order of such Judge made in a cause or matter pending before him in court may be enforced, and the person neglecting or refusing, without lawful excuse, to obey such order shall be liable to an action by any person aggrieved by such neglect or refusal for the damages sustained by him thereby. R.S.O. 1897, c. 143, s. 26; 1 Edw. VII. c. 17, s. 3.

Liability for non-attendance.

Limitation of time for making claims.

27. All claims arising under this Act shall be made by notice in writing under section 17 within one year after the

same have arisen otherwise they shall be barred; but in the event of such claims arising between the same parties in two successive seasons the same shall be so made within one year after the last of such claims has arisen. R.S.O. 1897, c. 143, s. 27; 1 Edw. VII. c. 17, s. 2, *amended*. Exemption.

28. The Lieutenant-Governor in Council may from time to time by proclamation published in the *Ontario Gazette* declare that any part of Ontario or any water therein shall, until further proclamation, be exempt from the operation of this Act, and thereupon the same shall be exempt accordingly. R.S.O. 1897, c. 143, s. 28. Exemption of territory from operation of Act.

29. Any part of Ontario or any water therein exempted by proclamation from the operation of this Act may, by proclamation published in the *Ontario Gazette*, be again brought within its operation until further proclamation and so on from time to time. R.S.O. 1897, c. 143, s. 29. Bringing exempted territory under Act.

FORM 1.

(Section 12.)

Know all men by these presents that we (here insert names of obligors, being the owner of the logs and at least one sufficient surety; or, if the signature of the owner cannot be obtained without unreasonable delay, then being two sureties) , are held and firmly bound unto A.B. (here insert the name of the person claiming the lien) in the penal sum of (double the amount of the claim) \$, to be paid to the said A.B., his executors, administrators and assigns, for which payment well and truly to be made we and each of us, bind ourselves, and each of us our and each of our executors and administrators jointly and severally, firmly by these presents, sealed with our seals, and signed by us this day of , 19 .

Whereas the said A.B., claiming to act under the authority of *The Saw Logs Driving Act* has taken possession of certain (saw logs, timber, etc., as the case may be) owned or controlled by and claims a lien thereon for the sum of \$, under the provisions of section (5, 8 or 11, as the case may be) of the said Act.

And whereas this bond is given as security for payment to the said A.B., of such sum as he may be held entitled to by arbitration pursuant to the said Act, and of any costs and expenses of the arbitration which may become payable to him.

Now the condition of the above obligation is such that if the said , his executors or administrators do pay to the said A.B., his executors, administrators or assigns, such sum as may be determined by arbitration pursuant to the said Act, to be payable to the said A.B., his executors, administrators or assigns for charges and expenses under section (5, 8 or 11, as the case may be) of said Act, and also such sum as may become payable to the said A.B., his executors, administrators or assigns, for costs and expenses of such arbitration, then the above obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered

in the presence of

X.Y.

C. D. [SEAL.]

F. G. [SEAL.]

SECTION X.

MERCANTILE LAW

CHAPTER 132.

An Act respecting the Legal Meaning of Expressions relative to Time.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Definition of Time Act*. 10 Edw. VII. c. 62, s. 1.

Meaning of expressions of time.

2.—(1) Where an expression of time occurs in any Act or in any Rule of Court, by-law, deed or other instrument, heretofore or hereafter enacted or executed, or where any hour or other period of time is stated either orally or in writing, or any question as to a period of time arises, the time referred to or intended shall, unless it is otherwise specifically stated, be held to be “standard time.” 10 Edw. VII. c. 62, s. 2 (1).

Standard time east of 90 degrees west longitude.

(2) As regards that part of Ontario which lies east of the meridian of ninety degrees west longitude, standard time shall be reckoned as five hours behind Greenwich time. 2 Geo. V. c. 17, s. 28.

West of that meridian.

(3) As regards that part of Ontario which lies west of that meridian, standard time shall be reckoned as six hours behind Greenwich time. 10 Edw. VII. c. 62, s. 2 (3).

“Month,” meaning of.

3. The expression “month,” where it occurs or is stated as in the next preceding section mentioned, shall mean a calendar month unless it is otherwise specifically stated. 10 Edw. VII. c. 62, s. 3.

Numbering hours of day.

4. The hours of the day may in any locality be numbered in one series up to 24. 10 Edw. VII. c. 62, s. 4.

CHAPTER 133.

An Act to amend the Mercantile Law.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Mercantile Law Amendment Act*. 10 Edw. VII. c. 63, s. 1.

2. In this Act,

Interpretation.

(a) "Bill of lading" shall include all receipts for goods accompanied by an undertaking to transfer the same from the place where they were received to some other place by any mode of carriage whatever, whether by land or water or partly by land and partly by water;

(b) Goods shall include wares and merchandise; "Goods."

(c) "Warehouse receipt" shall mean any receipt given by any person for any goods in his actual, visible and continued possession as bailee thereof in good faith and not as of his own property, and shall include "Warehouse receipt."

(i) a receipt given by any person who is the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods delivered to him as bailee, and actually in the place or in one or more of the places owned or kept by him whether such person is engaged in other business or not;

(ii) a receipt given by any person in charge of logs or timber in transit from timber limits or other land to the place of destination of such logs or timber, and

(iii) a specification of timber. 10 Edw. VII. c. 63, s. 2.

SURETIES' RIGHT TO ASSIGNMENT, ETC.

3.—(1) Every person who, being surety for the debt or duty of another or being liable with another for any debt or duty, pays the debt or performs the duty shall be entitled Right of sureties paying the principal debt, etc., to assignment.

to have assigned to him or to a trustee for him, every judgment, specialty or other security which is held by the creditor in respect of such debt or duty, whether such judgment, specialty or other security be or be not deemed at law to have been satisfied by the payment of the debt or the performance of the duty.

And to remedies on such assignment.

(2) Such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, on proper indemnity to use the name of the creditor in any action or other proceeding in order to obtain from the principal debtor, or any co-surety, co-contractor or co-debtor indemnification for the advances made and loss sustained by such person, and the payment or performance made by him shall not be a defence to such action or other proceeding by him.

What only one co-surety, etc., may recover from another.

(3) No co-surety, co-contractor or co-debtor shall be entitled to recover from any other co-surety, co-contractor or co-debtor more than the just proportion to which, as between themselves, such last mentioned person is justly liable. 10 Edw. VII. c. 63, s. 3.

Effect of advance on joint account, etc.

Imp. Act 44-45
V. c. 41, s. 61.

4.—(1) Where, in a mortgage or an obligation for payment of money, or a transfer of mortgage or of such obligation, made after the 1st day of July, 1886, the sum, or any part of the sum advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or where a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly and not in shares, the mortgage money, or other money or money's worth, for the time being due to such persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

Application of section.

(2) This section shall apply only if and as far as a contrary intention is not expressed in the mortgage or obligation or transfer, and shall have effect subject to the terms thereof. 10 Edw. VII. c. 63, s. 4.

Remedies against representatives of deceased joint contractors.

5. In case any one or more joint contractors, obligors or partners die the person interested in the contract, obligation or promise entered into by such joint contractors, obligors or partners may proceed by action against the representatives of the deceased contractor, obligor or partner in the same manner as if the contract, obligation or promise had been joint and several, and this notwithstanding there may

be another person liable under such contract, obligation or promise still living, and an action pending against such person; but the property and effects of shareholders in chartered banks or the members of other incorporated companies shall not be liable to a greater extent than they would have been if this section had not been passed. 10 Edw. VII. c. 63, s. 5.

6.—(1) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly to pay money or to make a conveyance, or to do any other act to them or for their benefit, shall be deemed to include and shall by virtue of this Act imply an obligation to do the act to or for the benefit of the survivor or survivors of them, and to or for the benefit of any other person to whom the right to sue on the covenant, contract, bond or obligation devolves.

(2) This section shall extend to a covenant implied by *The Conveyancing and Law of Property Act*.

Idem.
Rev. Stat.
c. 109.

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and shall have effect subject to the covenant, contract, bond or obligation and to the provisions therein contained. 10 Edw. VII. c. 63, s. 6.

Contrary
intention.

BILLS OF LADING.

7.—(1) Every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property in the goods therein mentioned passes upon, or by reason of such consignment or endorsement, shall have and be vested with all rights of action, and be subject to the same liabilities in respect of the goods as if the contract contained in the bill of lading had been made with him.

Rights and
liabilities of
consignees and
endorsers of
bills of lading,
Imp. Act 18-19
V. c. 111.

(2) Nothing in this section shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee, by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason of or in consequence of such consignment or endorsement.

Certain rights
and liabilities
not affected.

(3) Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel, train or conveyance of any kind shall be conclusive evidence of shipment as against the master or other person signing the same, notwithstanding that the goods or some part thereof may not have been so shipped, unless the holder of the bill of lading

Bills of lading
as evidence
against signer.

has actual notice at the time of receiving the same that the goods had not in fact been laden on board, or unless the bill of lading has a stipulation to the contrary; but the master or other person so signing may exonerate himself in respect to such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or of some person under whom the holder claims. 10 Edw. VII. c. 33, s. 7.

WAREHOUSE RECEIPTS, ETC., AS COLLATERAL SECURITY

Assignment
of warehouse
receipts.

8.—(1) The owner of or other person entitled to receive the goods included in a warehouse receipt or bill of lading may transfer such warehouse receipt or bill of lading by endorsement thereon signed by himself, his attorney or agent to any other person as collateral security for any debt owing by such person.

What passes
under
endorsement.

(2) The endorsement shall from the date thereof vest in the transferee all the right and title of the endorser to or in such goods subject to the right of the endorser to have such warehouse receipt or bill of lading re-transferred to him if the debt is paid when due.

Rights of
transferee.

(3) If the debt is not paid when due the person to whom such warehouse receipt or bill of lading was so transferred may sell the goods and retain the proceeds or so much thereof as will be equal to the amount of the debt, and shall return the overplus, if any, to the endorser. 10 Edw. VII. c. 63, s. 8.

Warehouse
receipt or bill
of lading given
by owner who
is a warehouse
man.

9. Where a person by whom a warehouse receipt or bill of lading might be given for goods in his capacity as a miller, or the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods delivered to him as bailee, master of a vessel or carrier, is the owner of or entitled himself otherwise than in such capacity to receive the goods, any warehouse receipt or bill of lading, or any acknowledgment or certificate intended to answer the purpose thereof, given and endorsed by such person shall be as valid and effectual for the purposes of this Act as if the warehouse receipt, bill of lading, acknowledgment or certificate had been given by one person and endorsed by another. 10 Edw. VII. c. 63, s. 9.

As to goods
manufactured
from articles
pledged.

10. If goods are manufactured or produced from the goods or any of them included in or covered by any warehouse receipt, while so covered, the person holding such warehouse receipt shall hold or continue to hold such goods during the process and after the completion of such manufacture or production with the same right and title and for the same purposes and upon the same conditions as he held

or could have held the original goods. 10 Edw. VII. c. 63, s. 10.

11.—(1) No goods other than timber, boards, deals, staves, sawlogs or other lumber shall be held in pledge for any ^{Limit of time for holding goods in pledge.} period exceeding six months.

(2) No lumber, boards, deals, staves, sawlogs or other ^{Idem.} lumber shall be held in pledge for any period exceeding twelve months.

(3) No transfer of a bill of lading or warehouse receipt shall be made under this Act to secure the payment of any ^{When the debt may be incurred.} debt unless the debt is contracted at the time of the acquisition of the bill of lading or warehouse receipt, or upon the written promise or agreement that such bill of lading or warehouse receipt would be given to such person. 10 Edw. VII. c. 63, s. 11.

12. All advances made on the security of a bill of lading or warehouse receipt shall give to the person making the ^{Prior claim of person making advance over unpaid vendor.} advances a claim for the re-payment of the advances on the goods therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor or other creditor, save and except claims for wages for labour performed in making and transporting timber, boards, deals, staves, sawlogs or other lumber; but such preference shall not be given over the claim of an unpaid vendor who had a lien upon the goods at the time of the acquisition by such person of the bill of lading or warehouse receipt, unless the same was acquired by him without knowledge of such lien. 10 Edw. VII. c. 63, s. 12.

13. In the event of the non-payment at maturity of any debt or liability secured by a bill of lading or warehouse receipt the holder thereof may sell the goods mentioned therein or so much thereof as will suffice to pay such debt or liability with interest and expenses, returning the surplus, if any, to the person from whom the bill of lading or warehouse receipt, or the goods mentioned therein, as the ^{Sale of goods on non-payment of debt.} case may be, were acquired; but such power of sale shall be exercised subject to the following ^{Requirements.} provisions:

(a) No sale of any timber, boards, deals, staves, sawlogs or other lumber shall be made under this ^{Notice of sale of timber, etc.} Act without the consent in writing of the owner until notice of the time and place of such sale has been given by registered letter to the last known address of the pledgor at least thirty days before the sale thereof.

(b) No goods other than timber, boards, deals, staves, sawlogs or other lumber shall be sold under the ^{Notice of sale of other goods.}

provisions of this section without the consent of the owner until notice of the time and place of sale has been given by a registered letter to the last known address of the pledgor thereof at least 10 days before the sale thereof.

Sale to be by
auction,
R.S.C. c. 29,
s. 89.

- (c) Every sale under such power of sale without the consent of the owner shall be made by public auction after notice thereof by advertisement in at least two newspapers published in or nearest to the place where the sale is to be made, stating the time and place thereof. 10 Edw. VII. c. 63, s. 13.

Transfer of
warehouse
receipts for
crude petro-
leum issued by
incorporated
companies.

14.—(1) Every transportation receipt, warehouse receipt, accepted order and certificate for crude petroleum, issued by any incorporated company authorized to carry on the business of warehousing, shall be transferable by endorsement, either special or in blank, and upon being endorsed in blank shall become transferable by delivery, and every such endorsement or transfer by delivery shall transfer all right of property and possession of the petroleum mentioned in any such transportation or warehouse receipt, accepted order or certificate, to the endorsee or transferee thereof, subject to the terms and conditions of such transportation or warehouse receipt, accepted order or certificate as fully and completely as if a sale of the petroleum mentioned therein had been made in the ordinary way.

Idem.

(2) On the delivery of any petroleum mentioned in such document by such company, in good faith, to a person in possession of such transportation or warehouse receipt⁺ accepted order or certificate so endorsed or transferred the company shall be freed from all further liability in respect thereof, and the endorsee or transferee or holder of every such transportation or warehouse receipt, accepted order or certificate to whom the property in the petroleum mentioned therein passes by reason of such endorsement or delivery, shall have transferred to and vested in him all rights of action and be subject to the same liabilities in respect of such petroleum as if the contract contained in the transportation or warehouse receipt, accepted order or certificate had been made by the company with himself. 10 Edw. VII. c. 63, s. 14.

Construction
of stipulations
not
of the essence
of the contract.
44 Viet. c. 5.

15. Stipulations in contracts as to time or otherwise which would not, before the passing of *The Ontario Judicature Act, 1881*, have been deemed to be or to have become of the essence of such contracts in a Court of Equity shall receive in all courts the same construction and effect as they would prior to the passing of that Act have received in equity. 1 Geo. V. c. 17, s. 41 (a).

16. Part performance of an obligation either before or <sup>Part perform-
ance.</sup> after a breach thereof when expressly accepted by the creditor in satisfaction or rendered in pursuance of an agreement for that purpose, though without any new consideration, shall be held to extinguish the obligation. 1 Geo. V. c. 17, s. 41 (b).

CHAPTER 134.

An Act respecting Assignments and Preferences by Insolvent Persons.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Assignments and Preferences Act*. 10 Edw. VII. c. 64, s. 1.

Interpretation.

2. In this Act,

"Judge."

"Judge" shall mean a Judge of the County or District Court of the county or district in which the assignment is required to be registered. 10 Edw. VII. c. 64, s. 2.

Where judge disqualified.

3. Where a Judge is disqualified to act in a matter arising under this Act a Judge of the County or District Court of an adjoining county or district shall have jurisdiction to act in his place. 10 Edw. VII. c. 64, s. 3.

NULLITY OF CERTAIN JUDGMENTS AND TRANSFERS.

Nullity of certain confessions of judgment, etc., etc.

4. Every confession of judgment, *cognovit actionem* or warrant of attorney to confess judgment given by a person, being at the time in insolvent circumstances or unable to pay his debts in full or knowing himself to be on the eve of insolvency, voluntarily or by collusion with a creditor with intent thereby to defeat, hinder, delay or prejudice his creditors wholly or in part, or to give one or more of his creditors a preference over his other creditors, or over any one or more of them, shall be null and void as against the creditors of the person giving the same and shall be ineffectual to support any judgment or execution. 10 Edw. VII. c. 64, s. 4.

Nullity of gifts, transfers, etc., made with intent to defeat or prejudice creditors.

5.—(1) Subject to the provisions of section 6 every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full, or knows that he is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice his creditors, or any one or more of them, shall, as against the creditor or creditors injured, delayed or prejudiced, be null and void.

(2) Subject to the provisions of section 6 every such gift, conveyance, assignment or transfer, delivery over or payment made by a person being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, to or for a creditor with the intent to give such creditor an unjust preference over his other creditors or over any one or more of them shall, as against the creditor or creditors injured, delayed, prejudiced or postponed, be null and void.

Unjust preferences.

(3) Subject to the provisions of section 6 if such a transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them it shall in and with respect to any action or proceeding which, within sixty days thereafter, is brought, had or taken to impeach or set aside such transaction be presumed *prima facie* to have been made with the intent mentioned in subsection 2, and to be an unjust preference within the meaning hereof whether the same is made voluntarily or under pressure.

When there is presumption of intention if transaction has effect of unjust preference.

If action brought.

(4) Subject to the provisions of section 6 if such a transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them it shall, if the debtor within sixty days after the transaction makes an assignment for the benefit of his creditors, be presumed *prima facie* to have been made with the intent mentioned in subsection 2, and to be an unjust preference within the meaning hereof whether the same be made voluntarily or under pressure.

Idem.

If assignment made.

(5) The word "creditor" in the fifth and sixth lines of subsection 2, in the second and third lines of subsection 3, and in the second and third lines of subsection 4, shall include any surety and the endorser of any promissory note or bill of exchange who would upon payment by him of the debt, promissory note or bill of exchange, in respect of which such suretyship was entered into or such endorsement was given, become a creditor of the person giving the preference within the meaning of these subsections. 10 Edw. VII. c. 64, s. 5.

"Creditor" for certain purposes to include surety and endorser.

ASSIGNMENTS FOR GENERAL BENEFIT OF CREDITORS.

6.—(1) Nothing in the next preceding section shall apply to an assignment made to the sheriff of the county or district in which the debtor resides or carries on business or, with the consent of a majority of his creditors having claims of \$100 and upwards computed according to the provisions of section 25, to another assignee resident within Ontario, for the purpose of paying rateably and proportionately and without preference or priority all the creditors of the debtor their just debts; nor to any *bona fide* sale or payment made in the ordinary course of trade or calling to an innocent purchaser or person; nor to any payment of money to a creditor, nor

Assignments for benefit of creditors and bona fide sales, etc., protected.

to any *bona fide* conveyance, assignment, transfer or delivery over of any goods or property of any kind, which is made in consideration of a present actual *bona fide* payment in money, or by way of security for a present actual *bona fide* advance of money, or which is made in consideration of a present actual *bona fide* sale or delivery of goods or other property where the money paid, or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor.

Transfer to
creditor of
consideration
for sale
invalid.

(2) In the case of a valid sale of goods or other property, and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor, under circumstances which would render void such a payment or transfer by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made.

Effect of
assignment
not in
accordance
with Act.

(3) Every assignment for the general benefit of creditors, which is not void under section 5, but is not made to the sheriff, nor to any other person with the prescribed consent of creditors, shall be void as against a subsequent assignment which is in conformity with this Act, and shall be subject in other respects to the provisions thereof until and unless a subsequent assignment is executed in accordance therewith.

Security
given up
upon void
payment to
be returned.

(4) Where a payment has been made which is void under this Act, and any valuable security was given up in consideration of the payment, the creditor shall be entitled to have the security restored, or its value made good to him before, or as a condition of, the return of the payment.

Exceptions.

(5) Nothing herein shall

Wages.
Rev. Stat.
c. 143.

(a) affect *The Wages Act*, or prevent a debtor providing for payment of wages due by him in accordance with the provisions of that Act,

Surrender of
securities

(b) affect any payment of money to a creditor where such creditor, by reason or on account of such payment, has lost or been deprived of, or has in good faith given up, any valid security which he held for the payment of the debt so paid unless the security is restored or its value made good to the creditor,

Exchange of
securities.

(c) apply to the substitution in good faith of one security for another security for the same debt so far as the debtor's estate is not thereby lessened in value to the other creditors, or

Certain
securities
to be valid.

(d) invalidate a security given to a creditor for a pre-existing debt where, by reason or on account of the giving of the security, an advance in money is made to the debtor by the creditor in the *bona fide* belief that the advance will enable the debtor

to continue his trade or business and to pay his debts in full. 10 Edw. VII. c. 64, s. 6.

7. No person other than a permanent and *bona fide* resident of Ontario shall be assignee under an assignment within the provisions of this Act, nor shall any assignee delegate his duties as assignee to or appoint as deputy any person who is not a permanent and *bona fide* resident of Ontario; and no charge shall be made or recoverable against the assignor or his estate for any services or other expenses of any such assignee, deputy or delegate of any assignee who is not a permanent and *bona fide* resident of Ontario. 10 Edw. VII. c. 64, s. 7.

8. Every assignment made under this Act for the general benefit of creditors, if the property is described in the words "all my personal property which may be seized and sold under execution and all my real estate, credits, and effects," or in words to the like effect, shall vest in the assignee all the real and personal estate, rights, property, credits, and effects, whether vested or contingent, belonging to the assignor at the time of the assignment, except such as are by law exempt from seizure or sale under execution, subject, however, as regards land, to the provisions of *The Registry Act* and *The Land Titles Act*. 10 Edw. VII. c. 64, s. 8.

Form of assignment for general benefit of creditors.

Rev. Stat. c. 124, 126.

[As to the preferential lien of a landlord, see *Landlord and Tenant Act*, R.S.O. c. 155.]

9. Every assignment for the general benefit of creditors, whether it is or is not expressed to be made under or in pursuance of this Act, and whether the assignment does or does not include all the real and personal estate of the assignor, shall vest the estate, whether real or personal or partly real and partly personal, thereby assigned in the assignee therein named for the general benefit of creditors, and such assignment and the property thereby assigned shall be subject to all the provisions of this Act, and the same shall apply to the assignee named in such assignment. 10 Edw. VII. c. 64, s. 9.

All assignments for general benefit of creditors to be subject to this Act.

10. If an assignor executing an assignment under this Act for the general benefit of his creditors owes debts both individually and as a member of a partnership, or as a member of different partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full. 10 Edw. VII. c. 64, s. 10.

How claims are to rank where different estates.

11.—(1) A majority in number and value of the creditors who have proved claims to the amount of \$100 or upwards may substitute for the sheriff, or for an assignee under an assignment to which subsection 3 of section 6 applies, a per-

Appointment of substituted assignee.

son residing in the county or district in which the assignor resided or carried on business at the time of the assignment.

Removal,
substitution or
addition.

(2) An assignee may be removed and another substituted, or an additional assignee appointed by the Judge.

Death of
assignee.

(3) Where an assignee dies a new assignee may be appointed in the manner provided by subsection 2.

Effect on
estate.

(4) Where a new or additional assignee is appointed the estate shall vest in him or in him jointly with his co-assignee without a conveyance or transfer, and he shall register a verified copy of the resolution of the creditors or of the order appointing him in the office in which the assignment was registered.

Registration.

(5) A verified copy of the resolution or of the order may be registered in the proper registry or land titles office and the registration thereof shall have the same effect as the registration of a conveyance. 10 Edw. VII. c. 34, s. 11.

Rights of
assignee.

12.—(1) Except as in this section is otherwise provided the assignee shall have the exclusive right of suing for the rescission of agreements, 'deeds and instruments or other transactions made or entered into in fraud of creditors or in violation of this Act.

Right of
creditor in
certain cases
if assignee
refuses.

(2) Where a creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate, and the assignee under the authority of the creditors or inspectors refuses or neglects to take such proceeding after being required so to do the creditor shall have the right to obtain an order of the Judge authorizing him to take the proceeding in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe, and thereupon any benefit derived from the proceeding shall, to the extent of his claim and full costs, belong exclusively to the creditor instituting the same for his benefit, but if, before such order is obtained, the assignee signifies to the Judge his readiness to institute the proceeding for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall belong to the estate. 10 Edw. VII. c. 64, s. 12.

Following
proceeds of
property
fraudulently
transferred.

13.—(1) In the case of a gift, conveyance, assignment or transfer of any property, real or personal, which is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made shall have sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds may be seized or recovered in any action by a person who would be entitled to seize and recover

the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made, and such right to seize and recover shall belong not only to an assignee for the general benefit of the creditors of the debtor but, where there is no such assignment, to all creditors of the debtor.

(2) Where there is no assignment for the benefit of creditors, and the proceeds are of such a character as to be seizable under execution, they may be seized under the execution of any creditor and shall be subject to the provisions of *The Creditors' Relief Act*. Taking proceeds under execution.
Rev. Stat. c. 81.

(3) Where there is no assignment for the benefit of creditors, and whether the proceeds are or are not of such a character as to be seizable under execution, an action may be brought therefor by a creditor, whether an execution creditor or not, on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the proceeds available for the general benefit of the creditors. Creditor suing on behalf of himself and other creditors.

(4) This section shall not apply as against innocent purchasers of the property. 10 Edw. VII. c. 64, s. 13. Protection of innocent purchasers.

14. An assignment for the general benefit of creditors under this Act shall take precedence of attachments, garnishee orders, judgments, executions not completely executed by payment, and orders appointing receivers by way of equitable execution subject to the lien, if any, of an execution creditor for his costs where there is but one execution in the sheriff's hands or to the lien, if any, for his costs of the creditor, who has the first execution in the sheriff's hands. 10 Edw. VII. c. 64, s. 14. Assignments to take precedence of attachments, etc.

15. Where the Crown has a claim in respect of estreated bail against the estate of a person who makes an assignment for the benefit of his creditors the Lieutenant-Governor in Council may waive any preference in respect of such claim which the Crown has against such estate by virtue of its prerogative right. 2 Geo. V. c. 17, s. 29. Waiver of claims by Crown.

16. No advantage shall be obtained by any creditor by reason of any mistake, defect or imperfection in any assignment under this Act for the general benefit of creditors if the same can be amended or corrected, and any such mistake, defect or imperfection shall be amended by the Judge on the application of the assignee or of any creditor of the assignor, and on such notice to other parties concerned as the Judge shall think reasonable, and the amendment, when made, shall have relation back to the date of the assignment, but not so as to prejudice the rights of innocent purchasers. 10 Edw. VII. c. 64, s. 15. Amendment by judge.

Publishing
notice of
assignment.

17.—(1) A notice of the assignment shall forthwith, after the delivery thereof to him or his assent thereto, be published by the assignee at least once in the *Ontario Gazette* and not less than twice in one newspaper having a general circulation in the county or district in which the property assigned is situate.

Registering
assignment.

(2) The assignment or a copy thereof shall also, within five days from the execution thereof, be registered by the assignee, together with an affidavit of a witness thereto of the due execution of the assignment, in the office of the clerk of the County or District Court of the county or district in which the assignor, if a resident in Ontario, resided at the time of the execution thereof, or if not a resident then in the office of the clerk of the County or District Court of the county or district where the personal property so assigned or where the principal part thereof is at the time of the execution of such assignment; and the clerk shall number and enter such assignments and endorse thereon the time of receiving the same, and the same shall be open for the inspection of all persons desiring to inspect the same.

Fees of clerk.

(3) The clerk shall be entitled to the same fees for services as if the assignment had been registered under *The Bills of Sale and Chattel Mortgage Act*.

Rev. Stat.
c. 135.

Provisional
County of
Haliburton.

(4) For the purposes of subsection 2 the Provisional County of Haliburton shall be deemed part of the County of Victoria. 10 Edw. VII. c. 64, s. 16.

Penalty for
neglecting
publication
or registra-
tion.

18.—(1) If the notice is not published as provided by the next preceding section, or if the assignment is not registered within five days from the delivery thereof to the assignee or his assent thereto, the assignee shall incur a penalty of \$10 for each and every day during which the default continues.

Onus of proof
of delivery
or assent.

(2) The burden of proving the time of such delivery or assent shall be upon the assignee.

Liability of
sheriff.

(3) Where the assignment is made to a sheriff he shall not incur the penalty unless he has been paid or tendered the cost of advertising and of registering the assignment, nor shall he be bound to act under the assignment until his costs in that behalf are paid or tendered to him. 10 Edw. VII. c. 64, s. 17.

Compelling
publication
and
registration.

19. If the assignment is not registered, or notice thereof is not published, the Judge may, upon the application of any person interested in the assignment, by order enforce the registration of the assignment or the publication of the notice. 10 Edw. VII. c. 64, s. 18.

(As to costs of order see *The Judges Orders Enforcement Act*, R.S.O. c. 79.)

20. The omission to publish or register as required by section 17 shall not, nor shall any irregularity in the publication or registration, invalidate the assignment. 10 Edw. VII. c. 64, s. 19.

DUTIES AND POWERS OF ASSIGNEE AND INSPECTOR.

21.—(1) It shall be the duty of the assignee immediately to inform himself, by reference to the assignor and his records of account, of the names and residences of the assignor's creditors, and, within five days from the date of the assignment, to call a meeting of the creditors for the appointment of inspectors and the giving of directions with reference to the disposal of the estate by mailing prepaid and registered to every creditor known to him a notice calling the meeting to be held in his office or some other convenient place to be named in the notice not later than twelve days after the mailing thereof, and by advertisement in the *Ontario Gazette*.

Duty to call meeting of creditors.

Notice thereof.

(2) All other meetings to be held shall be called in like manner. 10 Edw. VII. c. 64, s. 20.

Other meetings.

22.—(1) The creditors at any meeting may appoint one or more inspectors who shall superintend and direct the proceedings of the assignee in the management and winding up of the estate, and may also at any subsequent meeting for that purpose revoke the appointment of any inspector.

Appointment of inspectors.

Revocation.

(2) Where the appointment of an inspector is revoked or where an inspector dies, resigns his office or leaves Ontario the creditors at any meeting may appoint another inspector to take his place.

Appointment of another inspector.

(3) An inspector shall not directly or indirectly purchase any part of the stock-in-trade, debts or other assets of the assignor. 10 Edw. VII. c. 64, s. 21.

Inspector not to purchase assets.

38 V. (Dom.) c. 16, s. 35.

23.—(1) In case of a request in writing signed by a majority of the creditors having claims duly proved of \$100 and upwards, computed according to the provisions of section 25, it shall be the duty of the assignee, within two days after receiving such request, to call a meeting of the creditors for a day not later than twelve days after he receives the request, and in case of default the assignee shall incur a penalty of \$25 for every day after the expiration of the time limited for calling the meeting until it is called.

Meeting of creditors by request of majority thereof.

Penalty for not calling meeting.

(2) In case a sufficient number of creditors do not attend the meeting mentioned in section 21, or fail to give directions with reference to the disposal of the estate, the Judge may give such directions as he may deem necessary for that purpose. 10 Edw. VII. c. 64, s. 22.

Power of Judge.

24. At any meeting of creditors the creditors may vote in person or by proxy authorized in writing, but no creditor

Voting at meeting.

whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim, stating the amount and nature thereof. 10 Edw. VII. c. 64, s. 23.

Scale of
votes.

25.—(1) Subject to the provisions of section 11 all questions at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows:

For every claim of or over \$100 and not exceeding \$200,
1 vote.

For every claim of or over \$200 and not exceeding \$500,
2 votes.

For every claim of or over \$500 and not exceeding \$1,000,
3 votes.

For every additional \$1,000 or fraction thereof, 1 vote.

Upon claims
acquired
after
assignment.

(2) No person shall be entitled to vote on a claim acquired after the assignment unless the entire claim is acquired, but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable.

Casting vote.

(3) In case of a tie the assignee or, if there are two assignees, the assignee nominated for that purpose by the creditors, or by the Judge if none has been nominated by the creditors, shall have a casting vote.

Valuing
securities.

(4) Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the estate of the assignor, or on the estate of a third person for whom the assignor is only secondarily liable, he shall put a specified value thereon and the assignee, under the authority of the creditors, may either consent to the creditor ranking for the claim after deducting such valuation, or he may require from the creditor an assignment of the security at an advance of ten per cent. upon the specified value to be paid out of the estate as soon as the assignee has realized such security; and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate.

Right to re-
value in cer-
tain cases.

(5) If a creditor's claim is based upon a negotiable instrument upon which the assignor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the person primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its non-payment, he shall be entitled to amend his claim and revalue his security.

(6) Where a person claiming to be entitled to rank on the estate holds security for his claim, or any part thereof, of such a nature that he is required by this Act to value the same, and he fails to value such security the Judge, upon summary application by the assignee or by any other person interested in the estate, of which application at least three days' notice shall be given to the claimant, may order that, unless a specified value be placed on such security and notified in writing to the assignee within a time to be limited by the order, the claimant shall, in respect of the claim, or the part thereof for which the security is held, in case the security is held for part only of the claim, be wholly barred of any right to share in the proceeds of such estate.

When creditor holding security fails to value same.

Powers of Judge thereon.

(7) If a specified value is not placed on such security, and notified in writing to the assignee according to the exigency of the order, or within such further time as the Judge may by subsequent order allow, the claim, or the part, as the case may be, shall be wholly barred as against such estate but without prejudice to the liability of the assignor therefor.

Consequences of neglect of order.

Liability of assignor.

10 Edw. VII. c. 64, s. 24.

PROOF OF CLAIM.

26.—(1) Every person claiming to be entitled to rank on the estate shall furnish to the assignee particulars of his claim proved by affidavit and such vouchers as the nature of the case admits of.

Proof of claim.

(2) Where a person claiming to be entitled to rank on the estate does not, within a reasonable time after receiving notice of the assignment and of the name and address of the assignee, furnish to the assignee satisfactory proofs of his claim as provided by this and the preceding sections the Judge, upon summary application by the assignee or by any other person interested in the estate, of which application at least three days' notice shall be given to the claimant, may order that, unless the claim be proved to the satisfaction of the Judge within a time to be limited by the order, the claimant shall no longer be deemed a creditor of the estate and shall be wholly barred of any right to share in the proceeds thereof.

Limiting time for proof of claim.

(3) If the claim is not so proved within the time so limited, or within such further time as the Judge may by subsequent order allow, the same shall be wholly barred, and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the assignor therefor.

Consequences of neglect to prove claim.

(4) The two next preceding subsections shall not interfere with the protection afforded to assignees by section 56 of *The Trustee Act*.

Not to interfere with Rev. Stat. c. 121.

(5) A person whose claim has not accrued due shall nevertheless be entitled to prove under the assignment and to vote

Creditor may prove claim not due.

at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due. 10 Edw. VII. c. 64, s. 25.

Contestation
of claim.

27.—(1) At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim notice of contestation of the claim may be served by the assignee upon the claimant.

Limitation.

(2) Within thirty days after the receipt of the notice, or within such further time as the Judge may allow, an action shall be brought by the claimant against the assignee to establish the claim, and a copy of the writ in the action, or of the summons in case the action is brought in a Division Court, shall be served on the assignee; and in default of such action being brought and writ or summons served within the time limited the claim to rank on the estate shall be forever barred.

Service on
solicitor of
assignee.

(3) The notice by the assignee shall contain the name and place of business of a solicitor upon whom service of the writ or summons may be made; and service upon him shall be deemed sufficient service. 10 Edw. VII. c. 64, s. 26.

Procedure
where assignee
is satisfied but
assignor
desires to
dispute.

28.—(1) If the assignee is satisfied with the proof adduced in support of a claim, but the assignor disputes the same, the assignor shall do so by notice in writing to the assignee, stating the grounds upon which he disputes the claim; and such notice shall be given within ten days after the assignor is notified in writing by the assignee that he is satisfied with the proof adduced, and not afterwards unless by leave of the Judge.

Where
Assignee does
not require
action to be
brought.

(2) If upon receiving such notice of dispute the assignee does not deem it proper to require the claimant to bring an action to establish his claim he shall notify the assignor in writing of the fact, and the assignor may thereupon, and within ten days of his receiving such notice, apply to the Judge for an order requiring the assignee to serve a notice of contestation.

Conditions.

(3) The order shall be made only if, after notice to the assignee, the Judge is of opinion that there are good grounds for contesting the claim.

Where deci-
sion of
assignee shall
be final.

(4) If the assignor does not make such an application the decision of the assignee shall, as against him, be final and conclusive.

Decision of
judge on
validity of
claim

(5) If upon the application the claimant consents in writing the Judge may, in a summary manner, decide the question of the validity of the claim.

Intervention
by assignor
at trial of
action.

(6) If an action is brought by the claimant against the assignee the assignor may intervene at the trial, either personally or by counsel, for the purpose of calling and examining or cross-questioning witnesses. 10 Edw. VII. c. 64, s. 27.

29.—(1) No property or assets of an estate assigned under the provisions of this Act shall be removed out of Ontario without the order of the Judge, and the proceeds of the sale of any such property or assets, and all moneys received on account of any estate shall be deposited by the assignee in an incorporated bank within Ontario, and shall not be withdrawn or removed without the order of the Judge, except in payment of dividends and charges incidental to winding up the estate.

Retention of
assets in
the Province
and deposit
of moneys.

(2) An assignee or any person acting in his stead who violates the provisions of this section shall incur a penalty of \$500.

Penalty.

(3) One-half of the penalty shall go to the person suing therefor and the other half shall belong to the estate.

Application
of penalty.

(4) In default of payment of the penalty and all costs incurred in any action or proceeding for the recovery thereof, within the time limited by the judgment, the Court in which the action is brought may order that such assignee or person may be imprisoned for any period not exceeding thirty days, and such assignee or person shall be disqualified from acting as assignee of any estate while such default continues. 10 Edw. VII. c. 64, s. 28.

Imprisonment
in default
of payment
of penalty.

30. Upon the expiration of one month from the first meeting of creditors, or as soon as may be thereafter, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare, and keep constantly accessible to the creditors, accounts and statements of his doings as such assignee, and of the position of the estate. 10 Edw. VII. c. 64, s. 29.

Accounts to
be kept
accessible.

31. The law of set-off shall apply to all claims made against the estate, and also to all actions instituted by the assignee for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plaintiff or defendant, as the case may be, except in so far as any claim for set-off shall be affected by the provisions of this or any other Act respecting frauds or fraudulent preferences. 10 Edw. VII. c. 64, s. 30.

Set-off.

32. As large a dividend as can with safety be paid shall be paid by every assignee within twelve months from the date of the assignment, and earlier if required by the inspectors; and thereafter a further dividend shall be paid every six months, and more frequently if required by the inspectors, until the estate is wound up and disposed of. 10 Edw. VII. c. 64, s. 31.

Dividends
when to be
paid.

33. So soon as a dividend sheet is prepared notice thereof shall be given by registered letter to each creditor, inclosing an abstract of receipts and disbursements, showing what interest has been received by the assignee for money in his hands, together with a copy of the dividend sheet, noting thereon the

Notice of
dividend
sheet.

claims objected to, and stating whether any reservation has or has not been made therefor; and after the expiry of eight days from the date of mailing such notice, abstract and dividend sheet, dividends on all claims not objected to within that period shall be paid. 10 Edw. VII. c. 64, s. 32.

Distributing
moneys and
determining
claims.
Rev. Stat. c. 81.

34.—(1) The assignee may take the proceedings authorized by section 33 of *The Creditors Relief Act* to be taken by a sheriff, and in that case sections 33 and 34 of that Act shall apply *mutatis mutandis* to proceedings for the distribution of money and determination of claims arising under an assignment made under this Act, with the substitution of “assignee” for “sheriff”; but this section shall not relieve the assignee from mailing to each creditor the abstract and other information required by section 33 of this Act to be sent to creditors so far as the same is not contained in the list sent by him under section 33 of *The Creditors Relief Act*.

Rev. Stat. c. 81.

To what judge
application
to be made.

(2) A Judge of the County or District Court of the county or district where the assignment is required to be registered shall be the Judge to whom applications under this section shall be made. 10 Edw. VII. c. 64, s. 33.

Remuneration
of assignee.

35. The assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose after the first dividend sheet has been prepared, or by the inspectors, in case the creditors fail to provide therefor, subject to review by the Judge upon complaint of the assignee or of any creditor. 10 Edw. VII. c. 64, s. 34.

Where remun-
eration not
fixed before
the final
dividend.

36. Where the remuneration of the assignee has not been fixed under the next preceding section before the final dividend the assignee may insert in the final dividend sheet, and retain as his remuneration, a sum not exceeding five per cent. of the cash receipts, subject to review by the Judge; but no application by the assignee to review the allowance shall be entertained unless the question of his remuneration has been brought before a meeting of creditors competent to decide the same before the preparation of the final dividend sheet. 10 Edw. VII. c. 64, s. 35.

Remuneration
of inspectors.

37.—(1) An assignee shall not make any payment or allowance to an inspector beyond his actual and necessary travelling expenses in and about his duties as inspector, except under the authority of a resolution of the creditors passed at a meeting regularly called, fixing the amount thereof, and in the notice calling the meeting the fixing of the remuneration of the inspectors shall be specially mentioned as one of the subjects to be brought before the meeting.

Limit of
allowance.

(2) An inspector shall not be allowed more than four dollars a day besides actual travelling expenses. 10 Edw. VII. c. 64, s. 33.

EXAMINATION OF ASSIGNOR AND OTHERS.

38.—(1) Upon a resolution passed by a majority vote of the creditors present or represented at a meeting of creditors regularly called, or upon the written request of a majority of the inspectors, or upon an order made by the Judge, the assignee may examine upon oath before a Master, Local Master, Local Registrar, Deputy Clerk of the Crown, Judge of the County or District Court, Special Examiner, Official Referee or any other person named in the order, the assignor or any person who is or has been his agent, clerk, servant, officer or employee of any kind, touching the estate and effects of the assignor, and as to the property and means he had when the earliest of his debts or liabilities existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him; and the person examined may be required by the assignee to produce upon such examination any property, book, document or paper in his custody, power or control.

(2) Unless otherwise ordered the examination shall take place in the county or district within which the person to be examined resides.

(3) The Rules and procedure of the Supreme Court as to the examination of a judgment debtor, or any clerk or employee or former clerk or employee of a judgment debtor, shall, so far as may be, apply to an examination held under subsection 1. 10 Edw. VII. c. 64, s. 37.

39. Any person who has or is believed or suspected to have in his possession or power any book, document or paper of any kind relating in whole or in part to the assignor, his dealings or property, and who refuses or fails to produce the same for the inspection of the assignee within four days after demand in writing by the assignee, may by order of the Judge be examined before the Judge or any of the officers mentioned in section 38 touching such book, document or paper; and he shall be subject to the same consequences, in the case of neglect to attend or refusal to disclose the matters in respect of which he may be examined or to make such production, as are mentioned in section 41. 10 Edw. VII. c. 64, s. 38.

40. If the assignor does not attend for examination and does not allege a sufficient excuse for not attending or, if attending, he refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from such examination that the assignor has concealed or made away with his property in order to defeat or defraud his creditors or any of them, the Judge may order the assignor to be committed

to the common gaol of the county or district in which he resides for any period not exceeding twelve months. 10 Edw. VII. c. 64, s. 39.

Compelling
attendance
and produc-
tion of
books.

41. Any person other than the assignor liable to be examined shall be subject to the same consequences, in case of neglect to attend or refusal to disclose the matters in respect of which he may be examined or to make production, as a witness in an action in the Supreme Court. 10 Edw. VII. c. 64, s. 40.

CHAPTER 135.

An Act respecting Mortgages and Sales of Personal Property.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Bills of Sale and Chattel Mortgage Act*. 10 Edw. VII. c. 65, s. 1. Short title.

2. In this Act,

Interpretation.

- (a) "Actual and continued change of possession" shall mean such change of possession as is open and reasonably sufficient to afford public notice thereof; "Actual and continued change of possession."
- (b) "Creditors" shall include creditors of the mortgagor or bargainor suing on behalf of themselves and other creditors, an assignee in insolvency of a mortgagor or bargainor the liquidator of a company in a winding up proceeding under *The Winding Up Act of Canada*, and an assignee for the general benefit of creditors, as well as creditors having executions against the goods and chattels of the mortgagor or bargainor in the hands of a sheriff or other officer; "Creditors."
- (c) "Mortgage" shall include a conveyance intended to operate as a mortgage; "Mortgage."
- (d) "Rolling stock" shall mean and include any locomotive, engine, motor car, tender, snow plough, flanger, and every description of car or of railway equipment designed for movement on its wheels over or upon the rails or tracks of a railway. 10 Edw. VII. c. 65, s. 2; 3-4 Geo. V. c. 18, s. 28. "Rolling Stock."

3. This Act, except section 32, shall not apply to an assignment for the general benefit of creditors to which *The Assignments and Preferences Act* applies. Assignment for benefit of creditors excepted. Rev. Stat. c. 134.

4. This Act shall not apply to mortgages of vessels registered under the provisions of any Act in that behalf. 10 Edw. VII. c. 65, s. 4. Mortgages of registered vessels excepted.

EFFECT OF REGISTERING 'OR OMITTING TO REGISTER.

Registration of mortgages of goods not attended with change of possession.

5. Every mortgage of goods and chattels in Ontario, which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged, or a true copy thereof, shall be registered as hereinafter provided, together with

Affidavit of execution.

(a) the affidavit of an attesting witness thereto of the due execution of such mortgage, or of the due execution of the mortgage of which the copy filed purports to be a copy, which affidavit shall also state the date of the execution of the mortgage, and

Contents of affidavit of bona fides.

(b) the affidavit of the mortgagee that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, that the mortgage was executed in good faith and for the express purpose of securing the payment of money justly due or accruing due and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him. 10 Edw. VII. c. 65, s. 5.

6.—(1) A mortgage of goods and chattels made

Mortgage to secure future advances or endorsements.

(a) to secure the mortgagee for advances made in pursuance of an agreement in writing to make future advances for the purpose of enabling the borrower to enter into or to carry on business with such advances, the time of repayment thereof not being longer than one year from the making of the agreement; or

To secure against liability as surety.

(b) to secure the mortgagee against the endorsement of any bill of exchange or promissory note or other liability by him incurred for the mortgagor, such liability not extending for a longer time than one year from the date of the mortgage,

may be registered in the manner prescribed by this Act if accompanied by

Affidavit of execution.

(c) the affidavit of an attesting witness to the execution thereof, and,

Affidavit of bona fides.

(d) the affidavit of the mortgagee stating¹ that the mortgage truly sets forth the agreement and truly states the extent and amount of the advances intended to be made or liability intended to be created by the agreement and covered by the mortgage, and² that the mortgage is entered into in good faith and for the express purpose of securing the mort-

gagee repayment of his advances or against the liability intended to be created, as the case may be, and not³ for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor nor to prevent such creditors from recovering any claims which they may have against the mortgagor. 10 Edw. VII. c. 65, s. 6.

7. If the mortgage and affidavits are not registered as by Effect of non-registration. this Act provided, the mortgage shall be absolutely null and void as against creditors of the mortgagor, and as against subsequent purchasers or mortgagees in good faith for valuable consideration. 10 Edw. VII. c. 65, s. 7.

8. Every sale of goods and chattels, not accompanied by Requirements of sale of goods not attended with delivery. an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance Writing. under the provisions of this Act; and such conveyance or a true copy thereof accompanied by an affidavit of an attesting witness thereto of the due execution of the conveyance, and an affidavit of the bargainee that the sale is *bona fide* and for good consideration, as set forth in the conveyance, and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor, shall be registered, as hereinafter provided, otherwise Registration. the sale shall be absolutely null and void as against the creditors of the bargainor and as against subsequent purchasers or mortgagees in good faith. 10 Edw. VII. c. 65, s. 8.

9. Every such mortgage or conveyance shall operate and take effect upon, from and after the day and time of the execution thereof. 10 Edw. VII. c. 65, s. 9. When mortgage to take effect.

10. Every mortgage and every conveyance or agreement required to be registered under this Act shall contain such Manner of describing property in mortgages, etc. sufficient and full description of the goods and chattels that the same may be thereby readily and easily known and distinguished. 10 Edw. VII. c. 65, s. 10.

11. This Act shall extend to a mortgage or sale of goods Mortgages, etc., of goods not in possession of mortgagor or intended for future delivery. and chattels which may not be the property of or in the possession, custody or control of the mortgagor or bargainor or any person on his behalf at the time of the making of the mortgage or sale, and notwithstanding that such goods or chattels may be intended to be delivered at some future time, or that the same may not at the time of the making of the mortgage or sale be actually procured or provided or fit or ready for delivery, or that some act may be required for the making or completing of such goods and chattels or rendering the same fit for delivery. 10 Edw. VII. c. 65, s. 11.

Who may
make affidavits
of bona fides
and on renewal
of mortgage.

12.—(1) Every affidavit of *bona fides* required by this Act and every affidavit required upon the renewal of a chattel mortgage may be made by one of two or more bargainees or mortgagees, or by his or their agent if aware of all the circumstances and properly authorized in writing to take the conveyance or to take or renew the mortgage, or, in the case provided for by section 6, to make the agreement and to take the mortgage.

In the case
of a cor-
poration.

(2) If the mortgage or conveyance is made to a corporation the affidavit may be made by the president, vice-president, manager, assistant manager, secretary or treasurer, or by any other officer or agent thereof authorized to do so by resolution of the directors.

Affidavits
made by
agents or
officers.

(3) Where the affidavit is made by the agent of the mortgagee or bargainee, or by an officer or agent of a corporation, it shall state that the deponent is aware of all the circumstances connected with the mortgage or conveyance and has personal knowledge of the facts deposed to. 10 Edw. VII. c. 65, s. 12.

Agent's auth-
ority to be at-
tached to
mortgage.

13. The authority in writing referred to in the next preceding section, or a copy of such authority, shall be attached to and filed with the mortgage or conveyance. 10 Edw. VII. c. 65, s. 13.

Affidavit of
executor, ad-
ministrator,
next of kin,
or assignee.

14. Any affidavit by this Act required to be made by the mortgagee or by the bargainee may in the case of his death be made by any of his next of kin or by his executor or administrator, or if the mortgage has been assigned by his assignee. 10 Edw. VII. c. 65, s. 14.

General
authority to
take or renew
mortgages.

15. An authority to take a conveyance or to take or renew a mortgage may be a general one to take all or any conveyances to the bargainee, or to take and renew all or any mortgages to the mortgagee. 10 Edw. VII. c. 65, s. 15.

CONTRACTS TO GIVE MORTGAGES, ETC.

Effect of
contract to
give a chattel
mortgage.

16. Every covenant, promise or agreement to make, execute or give a mortgage of goods and chattels shall be in writing, and shall be deemed to be a mortgage within the meaning of this Act. 10 Edw. VII. c. 65, s. 16.

Effect of
contract to
make a sale.

17. Every covenant, promise or agreement to make a sale of goods and chattels shall be in writing and shall be deemed to be a sale of goods and chattels within the meaning of this Act. 10 Edw. VII. c. 65, s. 17.

REGISTRATION.

Where
instruments
to be
registered.

18.—(1) Except in the case of the Provisional County of Haliburton the instruments mentioned in the preceding sections shall be registered in the office of the clerk of the County or District Court of the county or district in which the property mortgaged or sold is at the time of the execution thereof.

(2) Where the property is situate in the Provisional County of Haliburton the instrument shall be registered in the office of the clerk of the first division court of the provisional county of the first division court of the provisional county of Haliburton.

(3) In the case of a county the instrument shall be registered within five days from the execution thereof.

(4) In the case of the Provisional County of Haliburton and of a district the instrument shall be registered within ten days from the execution thereof.

(5) The clerk shall file the instrument and endorse thereon the time of receiving it. 10 Edw. VII. c. 65, s. 18.

19. In the event of the permanent removal of the goods and chattels from the county, provisional county or district in which the goods and chattels were at the time of the execution of the mortgage to another county, provisional county or district before the payment and discharge of the mortgage, a copy of the mortgage and of the affidavits, documents, instruments and statements relating thereto, certified under the hand of the clerk in whose office it was registered, and under the seal of the Court, shall be filed with the proper officer as mentioned in section 18, of the county, provisional county or district to which the goods and chattels are removed within two months from such removal, otherwise the mortgage shall be null and void as against creditors of the mortgagor and as against subsequent purchasers and mortgagees in good faith for valuable consideration. 10 Edw. VII. c. 65, s. 19.

20. The clerk shall number every instrument or copy filed in his office, and shall enter in alphabetical order in a book to be provided by him the names of all the parties thereto, with the number indorsed thereon opposite to each name, and such entry shall be repeated alphabetically under the name of every party thereto. 10 Edw. VII. c. 65,

RENEWAL OF MORTGAGES.

21.—(1) Except as provided in subsection 2 and subject to the provisions of section 24 every mortgage registered in pursuance of this Act shall cease to be valid, as against the creditors of the person making the same and as against subsequent purchasers and mortgagees in good faith for valuable consideration, after the expiration of one year from the day of the registration thereof unless, within thirty days next preceding the expiration of the said term of one year, a statement, Form 1, exhibiting the interest of the mortgagee, his executors, administrators or assigns in the mortgaged property, and showing the amount still due for principal and interest thereon, and all payments made on account thereof, is registered in the proper office, as mentioned in section 18,

Affidavit. of the county, provisional county or district in which the mortgage was registered, with an affidavit of the mortgagee that the statement is true and that the mortgage has not been kept on foot for any fraudulent purpose.

Case of permanent removal of goods. (2) Where there has been a permanent removal of the goods and chattels, as mentioned in section 19, and a certified copy of the mortgage has been registered as required by that section the statement and affidavit shall be registered in the office in which such certified copy is registered, and the period of one year; shall be reckoned from the date of the registration of such certified copy.

When statement and affidavit may be registered in the office in which the mortgage was registered. (3) Where the two months mentioned in section 19 have not expired when the period of one year mentioned in subsection 1 expires, and a certified copy of the mortgage has not been registered as provided by section 19, the statement and affidavit may be registered in the office in which the mortgage was registered.

Remedying error or mistake made in statement. (4) If any *bona fide* error or mistake is made in the statement, either by the omission to give any credit or by any miscalculation in the computation of interest or otherwise, the statement and the mortgage therein referred to shall not be invalidated if the mortgagee, his executors, administrators or assigns within two weeks after the discovery of the error or mistake, registers an amended statement and affidavit referring to the former statement and clearly pointing out the error or mistake therein and correcting the same.

Advances made in good faith protected. (5) If before the registration of such amended statement and affidavit any creditor or purchaser or mortgagee in good faith for valuable consideration has made any *bona fide* advance of money or given any valuable consideration to the mortgagor, or has incurred any costs in proceedings taken on the faith of the amount due on the mortgage being as stated in the renewal statement and affidavit as first registered, the mortgage, as to the amount so advanced or the valuable consideration given or costs incurred by such creditor, purchaser or mortgagee, shall, as against such creditor, purchaser or mortgagee, stand good only for the amount mentioned in the renewal statement and affidavit first registered.

Manner of registering. (6) The statement and affidavit shall be deemed one instrument and shall be registered and entered as provided by section 20.

Annual registration of renewals. (7) Another statement in accordance with the provisions of subsection 1, verified as required by that subsection, shall be registered in the proper office, according to section 18 or subsection 2 of this section, as the case may be, within thirty days next preceding the expiration of one year from the day of the registration of the statement required by subsection 1, otherwise such mortgage shall cease to be valid as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith for valuable con-

sideration, and so on from year to year, that is to say, another verified statement shall be registered within thirty days next preceding the expiration of one year from the day of the registration of the former statement, otherwise such mortgage shall cease to be valid as aforesaid.

(8) If the affidavit is made by an assignee, or by any of his next of kin, or by his executor or administrator, the assignment or the several assignments through which he claims shall be registered with the statement and affidavit, unless the same have been already registered.

By whom affidavits on renewals may be made.

(9) Subsection 8 shall not apply to an assignment for the benefit of creditors under *The Assignments and Preferences Act*, or any other Act of Ontario or of Canada relating to assignments for the benefit of creditors, if such assignment be referred to in the statement and notice thereof has been given in manner required by law. 10 Edw. VII. c. 65, s. 21.

Assignment for benefit of creditors, excepted Rev. Stat. c. 134.

22. Where a new county or district is formed, or territory is added to a county or district, every mortgage which under the provisions of this Act would otherwise require to be renewed in the county or district of which the territory forming or added to the new county or district was part shall be renewed in the office of the proper officer of the county or district so formed or to which such territory is added, and upon such renewal a copy of the mortgage, certified under the hand of the officer in whose office it was registered and the seal of the court, shall be registered with the renewal statement and affidavit. 10 Edw. VII. c. 65, s. 22.

Mortgages where county or district boundaries altered.

SUBSEQUENT TAKING POSSESSION.

23. A mortgage or sale declared by this Act to be void or which under the provisions of section 21 has ceased to be valid as against creditors and subsequent purchasers or mortgagees shall not by the subsequent taking of possession of the goods and chattels mortgaged or sold by the mortgagee or bargainee be thereby made valid as against persons who became creditors, purchasers, or mortgagees before such taking of possession. 10 Edw. VII. c. 65, s. 23.

When subsequent possession not to validate mortgage or sale otherwise void.

MORTGAGES TO SECURE BONDS, ETC., OF CORPORATIONS.

24.—(1) In the case of a mortgage of goods and chattels made by any incorporated company to a bondholder, or to a trustee, for the purpose of securing the bonds or debentures of such company it shall be sufficient if the affidavit of *bona fides* is to the effect that the mortgage was executed in good faith and for the express purpose of securing the payment of the bonds or debentures referred to therein, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagors, or of preventing the creditors of such mortgagors from obtaining payment of any claim against them.

Affidavits of bona fides where mortgage given by company to secure bonds or debentures.

Where head office not in Ontario.

(2) Where the head office of the company is not within Ontario the mortgage may be registered within thirty days instead of five days, as provided by section 18.

Renewal of mortgages.

(3) Any such mortgage may be renewed in the manner and with the effect provided by section 21 by the filing of a statement by the mortgagee or one of the mortgagees exhibiting the interest of the mortgagee or mortgagees in the property claimed by virtue of the mortgage, and showing the amount of the bond or debenture debt which the same was made to secure, and showing all payments on account thereof, which, to the best of the information and belief of the person making such statement, have been made, or of which he is aware or has been informed, together with an affidavit of the person making such statement that the statement is true to the best of his knowledge, information and belief, and that the mortgage has not been kept on foot for any fraudulent purpose, and such statement shall be filed instead of the statement required by section 21.

Renewal of mortgages given to secure debentures of companies.

(4) Where the mortgage is made as a security for debentures and the by-law authorizing the issue of the debentures as a security for which the mortgage was made, or a copy thereof certified under the hand of the president or vice-president and secretary of the company and verified by an affidavit thereto attached or endorsed thereon and having the corporate seal attached thereto, is registered with the mortgage it shall not be necessary to renew the mortgage, but the same shall in such case continue to be as valid as if it had been duly renewed as in this Act provided.

Restriction of application of subsection (4).

(5) The next preceding subsection shall apply to every such mortgage made and registered after the 5th day of May, 1894, but nothing herein shall affect any accrued rights or any litigation pending on the 13th day of April, 1897 10 Edw. VII. c. 65, s. 24.

Mortgage of rolling stock.

25.—(1) In the case of a mortgage securing bonds made by an incorporated company on rolling stock owned by it it shall be sufficient for the purposes of this Act if the mortgage or a copy thereof and the affidavit in subsection 1 of the next preceding section referred to be filed in the office of the Provincial Secretary within the time limited by this Act for registering a mortgage to secure bonds or debentures of an incorporated company.

Where renewals to be filed.

(2) The office of the Provincial Secretary shall be the place for filing the renewal statements of any such mortgage of rolling stock where renewal thereof is necessary under this Act.

Application of subsections 1 and 2.

(3) Subsections 1 and 2 shall apply to any such mortgage on rolling stock heretofore made if the same has been filed as therein provided. 10 Edw. VII. c. 65, s. 25.

26.—(1) In the case of a mortgage, hypothec or other instrument made by an incorporated company securing bonds, debentures, notes or other securities on any rolling stock which is subject to any lease, conditional sale or bailment to a railway company, the same or a copy thereof may be filed in the office of the Provincial Secretary within 21 days from the execution thereof, and if so filed shall be as valid as against creditors of such company and subsequent purchasers as if the same had been registered pursuant to the provisions of this Act.

Mortgage to secure bonds etc., on leased rolling stock.

(2) Notice of the filing shall forthwith thereafter be given in the *Ontario Gazette*. 10 Edw. VII. c. 64, s. 26.

Notice in Gazette.

(3) In case any such mortgage, hypothec or other instrument made before the 14th day of April, 1908, or a copy thereof had been filed in the office of the Provincial Secretary within ninety days from that date the same shall be as valid as against creditors of such company and purchasers or mortgagees becoming such creditors, purchasers or mortgagees subsequent to that date as if it had been registered pursuant to the provisions of this Act.

As to mortgages made before 14th April, 1908.

PROOF OF REGISTRATION.

27. A copy of any instrument or document registered under this Act and of any endorsement thereon certified under the hand of the officer with whom the same is registered and under the seal of the court, or where the same is filed in the office of the Provincial Secretary under the hand of the Provincial Secretary or Assistant Provincial Secretary, shall be received as evidence by all courts that the instrument or document was received and registered or filed according to the endorsement thereon. 10 Edw. VII. c. 65, s. 27.

Evidence by certified copy.

DISCHARGE OF MORTGAGES.

28. A mortgage registered under this Act may be discharged by registering in the office in which the mortgage is registered a certificate, Form 2, signed by the mortgagee, his executors, administrators, or assigns. 10 Edw. VII. c. 65, s. 28.

Certificates of discharge of chattel mortgages.

29.—(1) The officer with whom the mortgage is registered upon receiving such certificate, proved by the affidavit of a subscribing witness, shall, at each place where the number of the mortgage has been entered, with the name of any of the parties thereto, in the book kept by him under section 20, or wherever otherwise in such book the mortgage has been entered, write the words "Discharged by Certificate Number (stating the number of the certificate)," and to such entry the officer shall subscribe his name, and he shall also endorse the fact of the discharge upon the instrument discharged, and shall subscribe his name to the endorsement.

Entering certificates of discharge.

Entries of
renewal.

(2) Where a mortgage has been renewed under section 21 the endorsement or entries required by the next preceding subsection need only be made upon the statement and affidavit filed on the last renewal, and at the entries of the statement and affidavit in such book.

When to be
registered.

(3) A certificate of discharge by an assignee shall not be registered unless and until the assignment is registered.

Entry of as-
signment of
mortgages.

(4) The assignment shall, upon proof by the affidavit of a subscribing witness, be registered, numbered and entered in such book in the same manner as a mortgage. 10 Edw. VII. c. 65, s. 29.

FEEs.

Fees.

30. For services under this Act the officers shall be entitled to the following fees:

- (a) For registering each instrument or copy or renewal statement, fifty cents;
- (b) For registering an assignment, twenty-five cents;
- (c) For registering a certificate of discharge, twenty-five cents; ⁺
- (d) For a general search, twenty-five cents;
- (e) For production and inspection of any instrument or document, ten cents;
- (f) For copies of any instrument or document and certifying the same, ten cents for every hundred words;
- (g) For extracts, whether made by the person making the search or by the officer, ten cents for every hundred words. 10 Edw. VII. c. 65, s. 30.

INSPECTION OF BOOKS AND INSTRUMENTS.

Inspection
of books
recording
instruments.

31.—(1) Every person shall on payment of the proper fees have access to and be entitled to inspect the books containing records or entries of mortgages, conveyances or assignments registered.

Idem.

(2) A person desiring such access or inspection shall not be required, as a condition to his right thereto, to furnish the names of the persons in respect of whom such access or inspection is sought.

Production of
instruments.

(3) The clerk shall upon demand produce for inspection any such mortgage, conveyance, assignment or copy thereof registered in his office. 10 Edw. VII. c. 65, s. 31.

STATISTICAL RETURNS.

32.—(1) Every officer with whom instruments are required to be registered under the provisions of this Act shall, on or before the 15th day of January in each year, transmit to the Minister of Agriculture a return which shall set out: Returns of chattel mortgages, etc., to be made by clerks.

(a) the number of undischarged mortgages on record in his office on the 1st day of January in the year next preceeding that in which the return is made;

(b) the number of mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors registered during the year following the said 1st day of January; and

(c) the number of undischarged mortgages on record in his office on the 31st day of December in said year.

(2) The return shall not include instruments which have lapsed by reason of non-renewal. Lapsed instruments.

(3) The occupations or callings of the mortgagors or assignors as stated in the instruments shall be classified and the return shall show the aggregate sums purporting to be secured by the mortgages in each class. (1) What to be shewn in returns.

(4) The return shall, where practicable, distinguish mortgages to secure endorsements or future advances from mortgages to secure existing debts or present advances. Considerations of mortgages to be classified. 10 Edw. VII. c. 65, s. 32.

FORM 1.

(Section 21.)

RENEWAL STATEMENT.

Statement exhibiting the interest of _____ in the property mentioned in the mortgage dated the _____ day of _____, 19____, made between _____ of _____ the one part, and _____ of _____, of the other part and registered in the office of the Clerk of the _____ Court of the _____ of _____, on the _____ day of _____ 19____, and of the amount due for principal and interest thereon, and of all payments made on account thereof.

The said _____ is still the mortgagee of the said property, and has not assigned the said mortgage (or the said _____ is the assignee of the said mortgage by virtue of an assignment thereof from the said _____ to him, dated the _____ day of _____ 19____), (or as the case may be).

No payments have been made on account of the said mortgage (or the following payments, and no other, have been made on account of the said mortgage:

19____, January 1, Cash received.....\$100.00)

The amount still due for principal and interest on the said mortgage is the sum of \$, made up as follows: (*here give the items*).

A. B.,
(*Signature of Mortgagee or Assignee.*)

County (*or District*) of }
To wit,

I, _____ of _____ in the _____ of the _____ the mortgagee named in the mortgage mentioned in the foregoing (*or annexed*)) statement (*or assignee of the mortgagee named in the mortgage mentioned in the foregoing [*or annexed*] statement*) (*as the case may be*), make oath and say:

1. That the foregoing (*or annexed*) statement is true.
2. That the mortgage mentioned in the said statement has not been kept on foot for any fraudulent purpose.

A. B.

Sworn before me at the _____ of _____ in the _____ of _____, this _____ day of _____, 19____.
E. F.,
A Commissioner, etc. }

10 Edw. VII. c. 65, Form 1.

FORM 2.

DISCHARGE OF MORTGAGE.

To the Clerk of the _____ Court of the _____ of _____

I, _____ of _____ do certify that _____ has satisfied all money due, or to grow due on a certain mortgage made by _____ to _____, which mortgage bears date the _____ day of _____, 19____, and was registered (*or in case the mortgage has been renewed was last renewed*), in the office of the Clerk of the _____ Court of the _____ of _____, on the _____ day of _____, 19____, as No. _____. (*here mention the date of registration of each assignment thereof, and the names of the parties, or mention that such mortgage has not been assigned, as the fact may be*); and that I am the person entitled by law to receive the money, and that such mortgage is therefore discharged.

Witness my hand, this _____ day of _____, 19____.

Witness, _____ A. B.,
C. D. (*Signature of Mortgagee or Assignee.*)

10 Edw. VII. c. 65, Form 2.

CHAPTER 136.

An Act respecting Conditional Sales of Goods.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Conditional Sales Act*. Short title.
1 Geo. V. c. 30, s. 1.

2. In this Act,

Interpreta-
tion.

“Goods” shall include wares and merchandise. 1 Geo. V. “Goods.”
c. 30, s. 2.

3.—(1) Where possession of goods is delivered to a purchaser, or a proposed purchaser or a hirer of them, in pursuance of a contract which provides that the ownership is to remain in the seller or lender for hire until payment of the purchase or consideration money or part of it, as against a subsequent purchaser or mortgagee claiming from or under the purchaser, proposed purchaser or hirer, without notice in good faith and for valuable consideration, such provision shall be invalid, and such purchaser, or proposed purchaser or hirer, shall be deemed the owner of the goods, unless

Invalidity of
conditional
sale
accompanied
by delivery
against
subsequent
purchaser or
mortgagee
unless

(a) the contract is evidenced by a writing signed by the purchaser, proposed purchaser or hirer or his agent, stating the terms and conditions of the sale or hiring and describing the goods sold or lent for hire; and,

the contract
is in writing

(b) within ten days after the execution of the contract a true copy of it is filed in the office of the clerk of the County or District Court of the county or district in which the purchaser, proposed purchaser or hirer resided at the time of the sale or hiring.

and a copy
filed in office
of clerk of
County or
District
Court.

(2) Subsection 1 shall apply to the case of a hire receipt where the hirer is given an option to purchase.

Hire
receipts.

(3) Where the delivery is made to a trader or other person for the purpose of resale by him in the course of business such provision shall also, as against his creditors, be invalid and he shall be deemed the owner of the goods unless the provisions of this Act have been complied with.

Goods deliv-
ered for the
purpose of
resale.

Ownership on resale.

(4) Where such trader or other person resells the goods in the ordinary course of his business the property in and ownership of such goods shall pass to the purchaser notwithstanding that the provisions of this Act have been complied with.

Application of s. 3 (1b) to musical instruments, etc.

(5) Clause (b) of subsection 1 shall not apply to a contract respecting manufactured goods, including pianos, organs or other musical instruments which, at the time possession is delivered, have the name and address of the seller or lender painted, printed, stamped or engraved thereon or plainly attached thereto, nor to a contract respecting household furniture other than pianos, organs or other musical instruments.

Error in name or description.

(6) An error or inaccuracy in the name or address of the seller or lender which does not mislead shall not prevent the application of subsection 5.

Rolling stock sold to railway company.

(7) This section shall not apply to a contract for the sale by an incorporated company to a railway company of rolling stock if the contract or a copy of it is filed in the office of the Provincial Secretary within ten days from its execution. 1 Geo. V. c. 30, s. 3.

Copy of contract to be given to purchaser or hirer.

4. The seller or lender shall deliver a copy of the contract to the purchaser or hirer within twenty days after the execution thereof, and if, after request, he neglects or refuses to do so the Judge of the County or District Court of the county or district in which the purchaser or hirer resided when the contract was made may, on summary application, make an order for the delivery of such copy. 1 Geo. V. c. 30, s. 4.

Index to be kept by clerk of County or District Court.

5. The clerk of the County or District Court shall make a record of every contract of which a copy is filed in his office under this Act in an index book to be kept for that purpose, and he shall be entitled to a fee of ten cents for making the record and to a fee of five cents for every search in respect thereof. 1 Geo. V. c. 30, s. 5.

Immaterial errors.

6. An error of a clerical nature or in an immaterial or non-essential part of the copy of the contract which does not mislead shall not invalidate the filing or destroy the effect of it. 1 Geo. V. c. 30, s. 6.

Seller's or lender's duty to give particulars of claim.

7.—(1) The seller or lender shall, within five days after the receipt of a request in writing from any proposed purchaser of any goods to which this Act applies, or from any other person interested, furnish particulars of the amount remaining due to him and the terms of payment of it, and in default he shall incur a penalty not exceeding \$50, recoverable under *The Ontario Summary Convictions Act*.

(2) If the request is by letter the person making the request shall give a name and post office address to which a reply may be sent, and it shall be sufficient if the information is given by registered letter deposited in the post office within the prescribed time addressed to the person inquiring at his proper post office address, or, where the name and address is given by him, by the name and at the post office address so given. 1 Geo. V. c. 30, s. 7.

8.—(1) Where the seller or lender retakes possession of the goods for breach of condition he shall retain them for twenty days, and the purchaser or hirer or his successor in interest may redeem the same within that period on payment of the amount then in arrear, together with interest and the actual costs and expenses of taking and keeping possession.

(2) Where the purchase price of the goods exceeds \$30, and the seller or lender intends to look to the purchaser or hirer for any deficiency on a resale of the goods, they shall not be resold until after notice in writing of the intended sale has been given to the purchaser or hirer or his successor in interest.

(3) The notice shall be served personally upon or left at the residence or last known place of abode in Ontario of the purchaser or hirer or his successor in interest at least five days before the sale, or may be sent by registered post at least seven days before the sale addressed to the purchaser or hirer or his successor in interest at his last known post office address.

(4) The notice may be given during the twenty days mentioned in subsection 1.

(5) This section shall apply notwithstanding any agreement to the contrary. 1 Geo. V. c. 30, s. 8.

9. Where the goods have been affixed to realty they shall remain subject to the rights of the seller or lender as fully as they were before being so affixed, but the owner of such realty or any purchaser or any mortgagee or other encumbrancer thereof shall have the right as against the seller or lender or other person claiming through or under him to retain the goods upon payment of the amount owing on them. 1 Geo. V. c. 30, s. 9.

9/12 - See 1916 R 511

CHAPTER 137.

An Act respecting Contracts in relation to Goods in the Possession of Agents and others.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.
Imp. Act, 52
and 53 V. c.
45, s. 17.

1. This Act may be cited as *The Factors Act*. 10 Edw. VII. c. 66, s. 1.

Interpreta-
tion. Idem.
s. 1.

2.—(1) In this Act,

"Document
of title."

(a) "Document of title" shall include any bill of lading and warehouse receipt, as defined by *The Mercantile Law Amendment Act*, any warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented;

Rev. Stat.
c. 133.

"Goods."

(b) "Goods" shall include wares and merchandise;

"Mercantile
agent."

(c) "Mercantile agent" shall mean a mercantile agent having, in the customary course of his business as such agent, authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods;

"Pledge."

(d) "Pledge" shall include any contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.

Possession.

(2) A person shall be deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf. 10 Edw. VII. c. 66, s. 2.

DISPOSITIONS BY MERCANTILE AGENTS.

Powers of
agent as to
disposition of
goods.
Imp. Act, s. 2

3.—(1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods any sale, pledge or other disposition of the goods made by him, when acting in the ordinary course of business

of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith and has not at the time thereof notice that the person making the disposition has not authority to make the same.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of documents of title to goods, any sale, pledge or other disposition which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent; provided that the person taking under the disposition acts in good faith and has not at the time thereof notice that the consent has been determined. Revocation of consent.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner. Derivative documents.

(4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary. Presumption.
10 Edw. VII. c. 66, s. 3.

4. A pledge by a mercantile agent of the documents of title to goods shall be deemed to be a pledge of the goods. Effect of pledge of documents of title.

5. Where a mercantile agent pledges goods as security for a debt due from or liability incurred by the pledgor to the pledgee before the time of the pledge the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge. 10 Edw. VII. c. 66, s. 5. Idem, s. 3.
Pledge for antecedent debt.
Idem, s. 4.

6. The consideration necessary for the validity of a sale, pledge or other disposition of goods by a mercantile agent, in pursuance of this Act, may be either a payment in cash or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or of other valuable consideration, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, document, security or other valuable consideration when so delivered or transferred in exchange. 10 Edw. VII. c. 66, s. 6. What consideration necessary.

7. For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorized in the ordinary course of business to make contracts of Rights acquired by exchange of goods or documents.
Idem, s. 5.

Agreements through clerks, etc.
Idem, s. 6.

sale or pledge on his behalf shall be deemed to be an agreement with the agent. 10 Edw. VII. c. 66, s. 7.

Rights of consignee making advances in good faith.

8.—(1) Where the owner of the goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made in good faith to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person.

Sale, etc., by mercantile agent.
Idem, s. 7.

(2) Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition by a mercantile agent. 10 Edw. VII. c. 66, s. 8.

DISPOSITION BY SELLERS AND BUYERS OF GOODS.

Rights of person claiming in good faith under seller who has remain d in possession.
Idem, s. 8.

9. Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof, or under any agreement for sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. 10 Edw. VII. c. 66, s. 9.

Claiming under buyer who has retained possession.
Idem, s. 9.

10.—(1) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof, or under any agreement for sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Exception as to contracts under The Conditional Sales Act.
Rev. Stat. c. 136.

(2) This section shall not apply to goods the possession of which is obtained under a contract coming within the meaning of *The Conditional Sales Act* where the seller has complied with the provisions of that Act. 10 Edw. VII. c. 66, s. 10.

Effect of sub-sale or pledge by buyer.
Imp. Act, 56 and 57 V. c. 71, s. 47.

11. Subject to the provisions of this Act the unpaid seller's right of lien or retention or stoppage in transitu shall not be affected by any sale or other disposition of the goods which the buyer may have made unless the seller has assented

thereto; but where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods and that person transfers the document to a person who takes the same in good faith and for valuable consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage in transitu shall be defeated; and if such last mentioned transfer was by way of pledge or other disposition for value the unpaid seller's right of lien or retention or stoppage in transitu can only be exercised subject to the rights of the transferee. 10 Edw. VII. c. 66, s. 11.

SUPPLEMENTAL.

12. For the purposes of this Act the transfer of a document of title may be by endorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery. Mode of transferring documents. Imp. Act, 52 and 53 V., c. 45, s. 11. 10 Edw. VII. c. 66, s. 12.

13.—(1) Nothing in this Act shall authorize an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability for so doing. Liability of agent. Idem, s. 12.

(2) Nothing in this Act shall prevent the owner of goods from recovering them from his agent at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien. Saving of rights of owner to recover possession. Or to recover balance of money due.

(3) Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set off on the part of the buyer against the agent. Or the price from buyer. 10 Edw. VII. c. 66, s. 13.

14. The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act. Saving for common law powers of agents. Idem, s. 13. 10 Edw. VII. c. 66, s. 14.

CHAPTER 138.

An Act respecting Limited Partnerships.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Limited Partnership Act*. 10 Edw. VII. c. 67, s. 1.

Formation of limited partnerships.

2. A limited partnership for the transaction of any mercantile, mechanical, manufacturing or other business within Ontario, except banking, the construction or operation of railways or the business of insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter mentioned. 10 Edw. VII. c. 67, s. 2.

Of whom to consist.

3. The partnership may consist of one or more persons, who shall be called general partners, and of one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners. 10 Edw. VII. c. 67, s. 3.

Liability of general and special partners.

4. General partners shall be jointly and severally responsible as general partners are by law, but special partners shall not be liable for the debts of the partnership beyond the amounts by them contributed to the capital. 10 Edw. VII. c. 67, s. 4.

General partners only to transact business, etc.

5. The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same. 10 Edw. VII. c. 67, s. 5.

Certificate to be signed.

Contents of.

6. The persons desirous of forming such partnership shall make and each of them shall sign a certificate, Form 1, which shall contain—

- (a) the name under which the partnership business is to be carried on;
- (b) the general nature of the business intended to be carried on;
- (c) the names of all the general and special partners, distinguishing which are general and which are special partners, and their usual places of residence;

(d) the amount of capital which each special partner has contributed;

(e) the time when the partnership is to commence and the time at which it is to terminate.

(f) the principal place of business of the partnership.
10 Edw. VII. c. 67, s. 6.

7. The certificate shall be signed by the persons forming the partnership before a Notary Public who shall certify to the execution of the same. 10 Edw. VII. c. 67, s. 7.

8. The certificate so signed and certified shall be filed in the office of the Clerk of the County or District Court of the county or district in which the principal place of business named in the certificate is situate, and shall be recorded by him at full length in a book to be kept for that purpose and open to public inspection. 10 Edw. VII. c. 67, s. 8.

9. For filing and recording the certificate the Clerk shall be entitled to receive the sum of twenty-five cents, and shall also be entitled to receive from every person searching in the book where such certificate is so recorded the sum of ten cents for each search. 10 Edw. VII. c. 67, s. 9.

10. No such partnership shall be deemed to have been formed until the certificate has been made, certified, and filed; and if any false statement is made in the certificate, all the members of the partnership shall be liable for all the engagements thereof as general partners. 10 Edw. VII. c. 67, s. 10.

11. Every renewal or continuance of a partnership beyond the time originally fixed for its duration shall be certified, filed and recorded in the manner herein required for its original formation; and every partnership otherwise renewed or continued shall be deemed a general partnership. 10 Edw. VII. c. 67, s. 11.

12. Every alteration made in the partnership name, in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other manner specified in the original certificate shall be deemed a dissolution of the partnership, and every such partnership in any manner carried on after any such alteration has been made shall be deemed a general partnership, unless renewed as a limited partnership according to the provisions of the next preceding section. 10 Edw. VII. c. 67, s. 12.

13. The business of the partnership shall be conducted under a name in which the names of the general partners,

or some or one of them only shall be used; and if the name of a special partner is used therein with his privity he shall be deemed a general partner. 10 Edw. VII. c. 67, s. 13.

Restrictions upon withdrawal of capital of special partners.

14. No part of the sum which a special partner has contributed to the capital shall be withdrawn by him, or paid or transferred to him as dividends, profits or otherwise, during the continuance of the partnership; but any partner may annually receive interest at a rate not exceeding five per centum per annum on the sum so contributed by him if the payment of such interest does not reduce the original amount of the capital; and if, after the payment of such interest, any profits remain to be divided he may also receive his share of such profits. 10 Edw. VII. c. 67, s. 14.

When special partner liable to refund.

15. If by the payment of interest or profits to a special partner the original capital has been reduced he shall be liable to restore the amount by which his share of the capital has been so reduced with interest. 10 Edw. VII. c. 67, s. 15.

Rights and liabilities of special partners.

16. A special partner may from time to time examine into the state and progress of the partnership business, and may advise as to its management; but he shall not transact any business on account of the partnership or be employed for that purpose as agent or otherwise; and if he does so he shall be deemed a general partner. 10 Edw. VII. c. 67, s. 16.

General partners liable to account.

17. The general partners shall be liable to account to each other and to the special partners for their management of the business in like manner as other partners. 10 Edw. VII. c. 67, s. 17.

Creditors preferred to special partners.

18. In case of the insolvency or bankruptcy of the partnership a special partner shall not, under any circumstances, be allowed to claim as a creditor until the claims of all the other creditors of the partnership have been satisfied. 10 Edw. VII. c. 67, s. 18.

No premature dissolution without notice, etc.

19. No dissolution of such partnership by the acts of the parties shall take place before the time specified in the certificate of its formation or of its renewal until a notice of such dissolution has been filed in the office in which the original certificate was filed and has been published once in each week, for three weeks, in a newspaper published in the county or district where the partnership has its principal place of business and for the same time in the *Ontario Gazette*. 10 Edw. VII. c. 67, s. 19.

FORM 1.

(Section 6.)

CERTIFICATE.

We, the undersigned, do hereby certify that we have entered into partnership under the name of (*B. D. & Co.*) as (*Grocers and Commission Merchants*), which firm consists of (*A. B.*) residing usually at _____, and (*C. D.*) residing usually at _____, as General Partners; and (*E. F.*), residing usually at _____ and (*G. H.*) residing usually at _____, as Special Partners. The said (*E. F.*) having contributed (\$4,000) and the said (*G. H.*) (\$8,000) to the Capital of the Partnership.

The principal place of business of the Partnership is at _____

The said Partnership is to commence on the _____ day of _____ 19____, and is to terminate on the _____ day of _____, 19____.

Dated this _____ day of _____

_____, 19____.
(Signed,) *A. B.*
C. D.
E. F.
G. H.

Signed in the presence of me,
L. M.,
Notary Public.

CHAPTER 139.

An Act respecting the Registration of Partnerships.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. 1. This Act may be cited as *The Partnership Registration Act*. 10 Edw. VII. c. 68, s. 1.

FILING DECLARATIONS.

Persons in partnership to deliver a declaration to the Registrar. 2.—(1) Persons associated in partnership for trading, manufacturing or mining purposes shall cause to be filed with the registrar of the registry division in which they carry or intend to carry on business a declaration in writing, Form 1, signed by all the members of the partnership.

When some of the parties are absent. (2) Where at the time of making the declaration any member is absent from the place where the partnership carries on or intends to carry on business the declaration shall be signed by the members present in their own names and also for any absent member, under his special authority to that effect, and such special authority shall at the same time be filed with the registrar and annexed to the declaration. 10 Edw. VII. c. 68, s. 2.

Requisites of declaration. 3. The declaration shall contain the names, surnames, additions and residences of every partner, and the name under which they carry on or intend to carry on business, and shall state also the time during which the partnership has subsisted, and shall also state that the persons therein named are the only members of the partnership. 10 Edw. VII. c. 68, s. 3.

When to be filed. 4. The declaration shall be filed within six months next after the formation of the partnership. 10 Edw. VII. c. 68, s. 4.

Declaration where change in partnership. 5.—(1) A similar declaration shall in like manner be filed whenever any change takes place in the membership of the partnership or in the name under which it carries on business, and every such declaration shall state the change in the membership of the partnership or in its name.

When to be filed. (2) The declaration shall be filed within six months after the change takes place. 10 Edw. VII. c. 68, s. 5.

6. The statements made in any declaration shall not be convertible by any person who has signed the same, nor as against any person not being a member of the partnership by any person who has signed the same, or who was really a member of the partnership therein mentioned at the time the declaration was made. 10 Edw. VII. c. 68, s. 6.

Effect of
allegations
in the
declaration.

7. Upon the dissolution of a partnership any or all of the persons who composed the partnership may sign a declaration, Form 2, certifying the dissolution of the partnership. 10 Edw. VII. c. 68, s. 7.

Declaration of
dissolution of
partnership.

8.—(1) Until a new declaration is made and filed by him, or by his partners or any of them, no person who signed the declaration filed shall be deemed to have ceased to be a partner.

Position of
persons signing
declaration.

(2) Nothing herein shall exempt from liability any person who, being a partner, fails to make and file the prescribed declaration, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone, and, if judgment is recovered against them, he may be sued on the original cause of action upon which the judgment was recovered. 10 Edw. VII. c. 68, s. 8.

Liability of
partners
failing to
make
declaration.

INDIVIDUALS TRADING UNDER PLURAL NAME.

9.—(1) Every person engaged in business for trading, manufacturing or mining purposes who is not associated in partnership with any other person, but uses as his business style some name or designation other than his own name, or who in such style uses his own name with the addition of "and Company," or some other word or phrase indicating a plurality of members in the firm, shall cause to be filed with the registrar of the registry division in which such person carries on or intends to carry on business a declaration in writing signed by such person.

A person
whose busi-
ness style in-
dicates plur-
ality to file a
declaration.

(2) Such declaration shall contain the name, surname, addition and residence of the person making the same, and the name under which he carries on or intends to carry on business, and shall also state that no other person is associated with him in partnership; and such declaration shall be filed within six months of the time when such name is first used. 10 Edw. VII. c. 68, s. 9.

Requisites of
declaration.

PENALTIES.

10. Every member of a partnership or other person required to file a declaration under the provisions of this Act who fails to comply with the requirements thereof shall incur a penalty of \$100, to be recovered in any court of competent jurisdiction. 10 Edw. VII. c. 68, s. 10.

Penalty for
non-compli-
ance.

(See *Fines, Penalties and Forfeitures Act, Rev. Stat. c. 99.*)

DUTIES OF REGISTRAR.

Registrar to
record declar-
ation.

11.—(1) The registrar shall enter the declarations, in the order in which the same are received, in a book to be by him kept for that purpose, which shall at all times during office hours be open to the inspection of the public without charge.

Registrar's
fee for filing.

(2) For filing and entering each declaration the registrar shall be entitled to receive from the person filing the same fifty cents if it does not contain more than two hundred words, and at the rate of ten cents per hundred words for all above the number of two hundred.

Indexes.

(3) The registrar shall keep two alphabetical index books of all declarations filed with him.

Form of
"Firm In-
dex."

(4) In one of such books, hereinafter called the "Firm Index," the registrar shall enter in alphabetical order the names of the firms in respect to which declarations have been filed with him, and shall place opposite each entry the names of the persons composing the firm, and the date of the receipt by him of the declaration, in the manner shown in Form 3.

Form of "In-
dividual In-
dex."

(5) In the second of such books, hereinafter called the "Individual Index," the registrar shall enter in alphabetical order the names of the respective members of each firm, and shall place opposite the entry the names of the firm of which each person is a member, and the date of the receipt of the declaration in the manner shown in Form 4.

Registrar's
fees for cer-
tain services.

(6) The registrar shall be entitled for searches to the following fees and no more:

For searching in Firm Index—each firm ten cents;
For searching in Individual Index—each name ten cents;
For each certificate, when required—twenty-five cents.

10 Edw. VII. c. 68, s. 11.

Who to fur-
nish registry
books.

12. The books required for the purposes of this Act shall be furnished by the treasurer of the municipality whose duty it is to furnish registry books, or in case of his default, by the registrar in the same manner as other registry books. 10 Edw. VII. c. 68, s. 12.

MISCELLANEOUS.

Butter or
cheese manu-
facturing Cos.
excepted.

13. This Act shall not apply to associations of individuals for the manufacture of butter or cheese and contributing produce from their dairies for that purpose. 10 Edw. VII. c. 68, s. 13.

Rights
of partners
inter se.

14. Nothing in this Act shall affect the rights of partners with regard to each other. 10 Edw. VII. c. 68, s. 14.

FORM 1.

(Section 2.)

DECLARATION OF PARTNERSHIP.

County or District) of
We of in (occu-
pation) and of in
(occupation), hereby certify

1. That we have carried on and intend to carry on trade and busi-
ness as at in partnership, under
the name of , ,

2. That the said partnership has subsisted since the
day of 19 .

3. And that we are and have been since the said day the only
members of the said partnership.

Witness our hands at this day of
19 .
A. B.
C. D.

10 Edw. VII. c. 68, Form 1.

FORM 2.

(Section 7.)

DECLARATION OF DISSOLUTION OF PARTNERSHIP.

County (or District) of } I,
at , in the } formerly a member of the firm carrying
the name of , of , under
partnership was on the do hereby certify that the said
day of 19 , dissolved.

Witness my hand, at , the day of
, 19 .
A. B.

10 Edw. VII. c. 68, Form 2.

FORM 3.
(Section 11.)
FIRM INDEX.

NAME OF FIRM.	NAMES OF PERSONS COMPOSING THE FIRM.	DATE OF FILING DECLARATION.
Abbott, Black & Co.	George Abbott, John Black, Edward Cook	10th February, 19—.
Bernard Green & Jones	John Bernard, Edward Green, John Jones	12th February, 19—.
Cook (Thos.) & Co.	Thomas Cook, James Wilson	14th February, 19—.
Dadson, William	William Dadson, Thomas Jones, Robert Watson, William Wilberforce, Jas. Johnson	14th February, 19—.
Dick & Co.	Richard Dick	15th May, 19—.
Pow (Wm.) & Sons.	William Dow	18th May, 19—.

10 Edw. VII. c. 68, Form 3.

FORM 4.
(Section 11.)
INDIVIDUAL INDEX.

NAME OF INDIVIDUAL	NAME OF FIRM OF WHICH A MEMBER.	DATE OF FILING DECLARATION.
Abbott, George	Abbott, Black & Co.	10th February, 19—.
Black, John	Abbott, Black & Co.	10th February, 19—.
Bernard, John	Bernard, Green & Jones	12th February, 19—.
Cook, Edward	Abbott, Black & Co.	10th February, 19—.
Cook, Thomas	Thomas Cook & Co.	14th February, 19—.
Dadson, William	William Dadson	14th February, 19—.
Dick, Richard	Dick & Co.	15th May, 19—.
Dow, William	Wm. Dow & Sons	18th May, 19—.

10 Edw. VII. c. 68, Form 4.

SECTION XI.

LABOUR AND WAGES.

CHAPTER 140.

An Act respecting Liens of Mechanics, Wage-Earners and Others.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts, as follows:—

1. This Act may be cited as *The Mechanics and Wage-Earners Lien Act*. 10 Edw. VII, c. 69, s. 1.

2. In this Act,

Interpretation.

- (a) "Contractor" shall mean a person contracting with "Contractor." or employed directly by the owner or his agent for the doing of work or service or placing or furnishing materials for any of the purposes mentioned in this Act;
- (b) "Material" or "materials" shall include every kind "Material." of moveable property;
- (c) "Owner" shall extend to any person, body corporate "Owner." or politic, including a municipal corporation and a railway company, having any estate or interest in the land upon or in respect of which the work or service is done, or materials are placed or furnished, at whose request and
 - (i) upon whose credit or
 - (ii) on whose behalf or
 - (iii) with whose privity and consent or
 - (iv) for whose direct benefit

work or service is performed or materials are placed or furnished, and all persons claiming under him or them whose rights are acquired after the work or service in respect of which the lien

is claimed is commenced or the materials furnished have been commenced to be furnished;

"Registrar."

(d) "Registrar" shall include Master of Titles and Local Master of Titles;

"Registry office."

(e) "Registry Office" shall include Land Titles Office;

"Sub-contractor."

(f) "Sub-contractor" shall mean a person not contracting with or employed directly by the owner or his agent for the purposes aforesaid, but contracting with or employed by a contractor, or under him by another sub-contractor;

"Wages."

(g) "Wages" shall mean money earned by a mechanic or labourer for work done, whether by the day or other time or as piece work. 10 Edw. VII. c. 69, s. 2.

Exception of streets or highways.

3. Nothing in this Act shall extend to any public street or highway, or to any work or improvement done or caused to be done by a municipal corporation thereon. 10 Edw. VII. c. 69, s. 3.

Contracts waiving application of Act to be void.

4.—(1) Every agreement, verbal or written, express or implied, on the part of any workman, servant, labourer, mechanic or other person employed in any kind of manual labour intended to be dealt with in this Act, that this Act shall not apply, or that the remedies provided by it shall not be available for the benefit of such person, shall be null and void.

Exception as to certain employees.

(2) This section shall not apply to a manager, officer or foreman, or to any other person whose wages are more than \$5 a day. 10 Edw. VII. c. 69, s. 4.

Effect upon third party of agreement waiving lien.

5. No agreement shall deprive any person otherwise entitled to a lien under this Act who is not a party to the agreement, of the benefit of the lien, but it shall attach, notwithstanding such agreement. 10 Edw. VII. c. 69, s. 5.

General right of workman or material man to a lien.

6. Unless he signs an express agreement to the contrary, and in that case subject to the provisions of section 4, any person who performs any work or service upon or in respect of, or places or furnishes any materials to be used in the making, constructing, erecting, fitting, altering, improving or repairing of any erection, building, railway, land, wharf, pier, bulkhead, bridge, trestlework, vault, mine, well, excavation, fence, sidewalk, pavement, fountain, fishpond, drain, sewer, aqueduct, roadbed, way, fruit or ornamental trees, or the appurtenances to any of them, for any owner, contractor or sub-contractor, shall by virtue thereof have a lien for the price of such work, service or materials upon the erection, building, railway, land, wharf, pier, bulkhead, bridge, trestle-

work, vault, mine, well, excavation, fence, sidewalk, paving, fountain, fishpond, drain, sewer, aqueduct, roadbed, way, fruit or ornamental trees, and appurtenances, and the land occupied thereby or enjoyed therewith, or upon or in respect of which such work or service is performed, or upon which such materials are placed or furnished to be used, limited, however, in amount to the sum justly due to the person entitled to the lien and to the sum justly owing, except as herein provided, by the owner. 10 Edw. VII. c. 69, s. 6.

7. Where work or service is done or materials are furnished upon or in respect of the land of a married woman with the privity and consent of her husband he shall be conclusively presumed to be acting as well for himself so as to bind his own interest, and also as her agent for the purposes of this Act, unless before doing such work or service or furnishing such materials the person doing or furnishing the same shall have had actual notice to the contrary. 10 Edw. VII. c. 69, s. 7.

When husband's interest liable for work done or materials furnished on land of married women.

8.—(1) The lien shall attach upon the estate or interest of the owner in the property mentioned in section 6.

Property upon which lien shall attach.

(2) Where the estate or interest upon which the lien attaches is leasehold the fee simple may also, with the consent of the owner thereof, be subject to the lien, provided that such consent is testified by the signature of the owner upon the claim of lien at the time of the registering thereof, verified by affidavit.

Where estate charged is leasehold.

(3) Where the land upon or in respect of which any work or service is performed, or materials are placed or furnished to be used, is incumbered by a prior mortgage or other charge, and the selling value of the land is increased by the work or service, or by the furnishing or placing of the materials, the lien shall attach upon such increased value in priority to the mortgage or other charge. 10 Edw. VII. c. 69, s. 8.

Prior mortgage.

9. Where any of the property upon which a lien attaches is wholly or partly destroyed by fire any money received by reason of any insurance thereon by an owner or prior mortgagee or chargee shall take the place of the property so destroyed, and shall be subject to the claims of all persons for liens to the same extent as if such money was realized by a sale of such property in an action to enforce the lien. 10 Edw. VII. c. 69, s. 9.

Application of insurance when lien attaches.

10. Save as herein otherwise provided the lien shall not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor. 10 Edw. VII. c. 69, s. 10.

Limit of amount of owner's liability.

Limit of lien when claimed by some other than contractor.

11. Save as herein otherwise provided where the lien is claimed by any person other than the contractor the amount which may be claimed in respect thereof shall be limited to the amount owing to the contractor or sub-contractor or other person for whom the work or service has been done or the materials placed or furnished. 10 Edw. VII. c. 69, s. 11.

Retention of percentage by owner for thirty days.

12.—(1) In all cases the person primarily liable upon any contract under or by virtue of which a lien may arise shall, as the work is done or materials are furnished under the contract, deduct from any payments to be made by him in respect of the contract, and retain for a period of thirty days after the completion or abandonment of the contract twenty per cent. of the value of the work, service and materials actually done, placed or furnished as mentioned in section 6, and such value shall be calculated on the basis of the contract price, or if there is no specific contract price, then on the basis of the actual value of the work, service or materials.

Where contract price exceeds \$15,000.

(2) Where the contract price or actual value exceeds \$15,000 the amount to be retained shall be fifteen per cent. instead of twenty per cent.

Effect of lien on amounts retained.

(3) The lien shall be a charge upon the amount directed to be retained by this section in favour of sub-contractors whose liens are derived under persons to whom such moneys so required to be retained are respectively payable.

Payments made in good faith without notice of lien.

(4) All payments up to eighty per cent., or eighty-five per cent. where the contract price or actual value exceeds \$15,000, of such price or value made in good faith by an owner to a contractor, or by a contractor to a sub-contractor, or by one sub-contractor to another sub-contractor, before notice in writing of such lien given by the person claiming the lien to him, shall operate as a discharge *pro tanto* of the lien.

Payment of percentage and discharge of liens.

(5) Payment of the percentage required to be retained under subsections 1 and 2 may be validly made so as to discharge all liens or charges in respect thereof after the expiration of the period of thirty days mentioned in subsection 1 unless in the meantime proceedings have been commenced to enforce any lien or charge against such percentage as provided by sections 23 and 24. 10 Edw. VII. c. 69, s. 12.

Payments made direct by owner to persons entitled to lien.

13. If an owner, contractor or sub-contractor makes a payment to any person entitled to a lien under section 6 for or on account of any debt justly due to him for work or service done or for materials placed or furnished to be used as therein mentioned, for which he is not primarily liable, and within three days afterwards gives, by letter or otherwise, written notice of such payment to the person

primarily liable, or his agent, such payment shall be deemed to be a payment on his contract generally to the contractor or sub-contractor primarily liable but not so as to affect the percentage to be retained by the owner as provided by section 12. 10 Edw. VII. c. 69, s. 13.

14.—(1) The lien shall have priority over all judgments, executions, assignments, attachments, garnishments, and receiving orders recovered, issued or made after such lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of such lien to the person making such payments or after registration of a claim for such lien as hereinafter provided. Priority of lien.

(2) Where there is an agreement for the purchase of land, and the purchase money or part thereof is unpaid, and no conveyance has been made to the purchaser, he shall, for the purposes of this Act, be deemed a mortgagor and the seller a mortgagee. Agreements for purchase where part of purchase money unpaid.

(3) Except where it is otherwise provided by this Act no person entitled to a lien on any property or money shall be entitled to any priority or preference over another person of the same class entitled to a lien on such property or money, and each class of lien holders shall rank *pari passu* for their several amounts, and the proceeds of any sale shall be distributed among them *pro rata* according to their several classes and rights. 10 Edw. VII. c. 69, s. 14. Priority among lien holders.

15.—(1) Every mechanic or labourer whose lien is for wages shall, to the extent of thirty days' wages, have priority over all other liens derived through the same contractor or sub-contractor to the extent of and on the same basis as the lien of a contractor or fifteen per cent., as the case may be, shall be retained by section 12, to which the lien of a mechanic or labourer through whom such lien is derived shall be subject. Priority of lien for wages.

(2) Every wage-earner shall have a lien in respect of a contract for the payment of wages.

(3) If the contractor's lien is claimed by a wage-earner, it shall be calculated on the value of the work done by the contractor or sub-contractor, if he is employed, he shall have a lien on the same basis as the lien of a contractor.

(4) Where a contractor is engaged in completing a contract for the payment of a wage-earner, he shall have a lien on the same basis as the lien of a contractor to the same extent and for the same purpose, nor shall the contractor be liable for the retention of the contract money in payment of wages to the contractor or sub-contractor.

Devices to
defeat priority
of wage
earners.

(5) Every device by an owner, contractor or sub-contractor to defeat the priority given to a wage-earner for his wages, and every payment made for the purpose of defeating or impairing a lien shall be null and void. 10 Edw. VII. c. 69, s. 15.

MATERIAL.

Restraining
attempt to
remove mate-
rial affected
by lien.

16.—(1) During the continuance of a lien no part of the material affected thereby shall be removed to the prejudice of the lien.

Exemption
from execution
of material fur-
nished for
certain pur-
poses.

61 V. c. 29,
s. 13 (3)
Man.

(2) Material actually brought upon any land to be used in connection with such land for any of the purposes enumerated in section 6, shall be subject to a lien in favour of the person furnishing it until placed in the building, erection or work, and shall not be subject to execution or other process to enforce any debt other than for the purchase thereof, due by the person furnishing the same. 10 Edw. VII. c. 69, s. 16; 1 Geo. V. c. 17, s. 37.

REGISTRATION OF LIEN.

[As to registration of liens against mining claims and mining lands, see R.S.O. c. 32, s. 182.]

Recy. of claim
for
lien

17.—(1) A claim for a lien, Forms 1, 2 and 3, may be registered in the registry office of the registry division, or where the claim is registered under *The Land Titles Act* in the land registry office of the locality in which the land is situate, and

the name of the person claiming the lien, or of the person whom the claimant believes to be the owner of the land, and of the person to whom the service was or is to be done, the date when the service was to be done or

the service done or
placed or to

due;

for the purpose
is registered
reference to
and to the
registered in the

(e) the date of expiry of the period of credit when credit has been given.

(2) The claim shall be verified by the affidavit, Form 4, Form of affidavit. of the person claiming the lien, or of his agent or assignee having a personal knowledge of the matters required to be verified, and the affidavit of the agent or assignee shall state that he has such knowledge.

(3) When it is desired to register a claim for lien against a railway it shall be a sufficient description of the land of the railway company to describe it as the land of the railway company, and every such claim shall be registered in the general registry in the registry office for the registry division within which such lien is claimed to have arisen. 10 Edw. VII. c. 69, s. 17. Description of lands where lien registered against railway.

18. A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein, but where more than one lien is included in one claim each lien shall be verified by affidavit as provided in section 17. 10 Edw. VII. c. 69, s. 18. What may be included in claim.

19.—(1) A substantial compliance with sections 17 and 18 shall be sufficient, and no lien shall be invalidated by reason of failure to comply with any of the requisites of those sections unless, in the opinion of the court, judge or officer who tries an action under this Act, the owner, contractor or sub-contractor, mortgagee or other person, is prejudiced thereby, and then only to the extent to which he is thereby prejudiced. Informality in cases of registering liens.

(2) Nothing in this section shall dispense with registration of the claim for lien. 10 Edw. VII. c. 69, s. 19. Exception.

20.—(1) The registrar, upon payment of the proper fee, shall register the claim, describing it as "Mechanics' Lien," against the land therein described in like manner as if it were a mortgage, but he shall not copy the claim or affidavit in any registry book. Effect of registration.

(2) The fee for registration of a claim for lien shall be twenty-five cents, and if several persons join in one claim the registrar shall be entitled to a further fee of ten cents for each person after the first. 10 Edw. VII. c. 69, s. 20. Fee for registration.

21. Where a claim is so registered the person entitled to the lien shall be deemed a purchaser *pro tanto* and within the provisions of *The Registry Act* and *The Land Titles Act*, but except as herein otherwise provided those Acts shall not apply to any lien arising under this Act. 10 Edw. VII. c. 69, s. 21. Status of lienholder. Rev Stat. c. c. 124, 126.

Limit of
time for
registration.

22.—(1) A claim for lien by a contractor or sub-contractor, in cases not otherwise provided for, may be registered before or during the performance of the contract, or within thirty days after the completion or abandonment thereof.

Materials.

(2) A claim for lien for materials may be registered before or during the furnishing or placing thereof, or within thirty days after the furnishing or placing of the last material so furnished or placed.

Services.

(3) A claim for lien for services may be registered at any time during the performance of the service or within thirty days after the completion of the service.

Wages.

(4) A claim for lien for wages may be registered at any time during the performance of the work for which such wages are claimed, or within thirty days after the last work is done for which the lien is claimed.

In case of
supervision by
architect,
etc., etc.

(5) In the case of a contract which is under the supervision of an architect, engineer or other person upon whose certificate payments are to be made, the claim for lien by a contractor may be registered within the time mentioned in subsection 1, or within seven days after the architect, engineer or other person has given, or has, upon application to him by the contractor, refused to give a final certificate. 10 Edw. VII. c. 69, s. 22.

EXPIRY AND DISCHARGE OF LIEN.

Expiry of
liens.

23. Every lien for which a claim is not registered shall absolutely cease to exist on the expiration of the time hereinbefore limited for the registration thereof unless in the meantime an action is commenced to realize the claim, or in which the claim may be realized under the provisions of this Act, and a certificate thereof is registered in the registry office in which the claim for lien might have been registered. 10 Edw. VII. c. 69, s. 23.

When lien to
cease if regis-
tered and not
proceeded
upon.

24.—(1) Every lien for which a claim has been registered shall absolutely cease to exist on the expiration of ninety days after the work or service has been completed or materials have been furnished or placed, or after the expiry of the period of credit, where such period is mentioned in the claim for lien registered, or in the cases provided for by subsection 5 of section 22, on the expiration of thirty days from the registration of the claim, unless in the meantime an action is commenced to realize the claim or in which the claim may be realized under the provisions of this Act, and a certificate is registered as provided by the next preceding section.

Necessity for
renewal.

(2) Where the period of credit mentioned in the claim for lien registered has not expired it shall nevertheless cease to have any effect on the expiration of six months from the

registration or any re-registration thereof if the claim is not again registered within that period, unless in the meantime an action is commenced and a certificate thereof has been registered as provided by subsection 1. 10 Edw. VII. c. 69, s. 24.

25. If there is no period of credit, or if the date of the expiry of the period of credit is not stated in the claim so registered, the lien shall cease to exist upon the expiration of ninety days after the work or service has been completed or materials furnished or placed, unless in the meantime an action is commenced and a certificate thereof registered as provided by section 23. 10 Edw. VII. c. 69, s. 25.

When lien to cease if there is no period of credit.

26. The right of a lien holder may be assigned by an instrument in writing and, if not assigned, upon his death shall pass to his personal representative. 10 Edw. VII. c. 69, s. 26.

Assignment or death of lienholder.

27.—(1) A lien may be discharged by a receipt signed by the claimant, or his agent duly authorized in writing, acknowledging payment, and verified by affidavit and registered.

Discharge of lien.

(2) The receipt shall be numbered and entered like other instruments, but shall not be copied in any registry book, and there shall be entered against the entry of the lien to which the discharge relates the word "discharged" and the registration number of such discharge.

Registration.

(3) The fee shall be the same as for registering a claim. Fee.

(4) Upon application the court, judge or officer having jurisdiction to try an action to realize a lien, may allow security for or payment into court of the amount of the claim, and may thereupon order that the registration of the lien be vacated or may vacate the registration upon any other proper ground and a certificate of the order may be registered.

Security or payment into court and vacating lien thereon.

(5) Where the certificate required by sections 23 or 24 has not been registered within the prescribed time, and an application is made to vacate the registration of a claim for lien after the time for registration of the certificate required by sections 23, 24 or 25, the order vacating the lien may be made *ex parte* upon production of the certificate of the proper registrar certifying the facts entitling the applicant to such order. 10 Edw. VII. c. 69, s. 27.

When notice of application to vacate not requisite.

EFFECT OF TAKING SECURITY OR EXTENDING TIME.

28.—(1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgement of the claim, or the giving of time

Effect generally.

for the payment thereof, or the taking of any proceedings for the recovery, or the recovery of a personal judgment for the claim, shall not merge, waive, pay, satisfy, prejudice or destroy the lien unless the claimant agrees in writing that it shall have that effect.

Where period of credit not expired.

(2) Where any such promissory note or bill of exchange has been negotiated the lien holder shall not thereby lose his lien if, at the time of bringing his action to enforce it, or where an action is brought by another lien holder, he is, at the time of proving his claim in such action, the holder of such promissory note or bill of exchange.

Time for bringing action not extended.

(3) Nothing in subsection 2 shall extend the time limited by this Act for bringing the action to enforce the lien.

Time for bringing action by person who gave time for payment.

(4) A person who has extended the time for payment of a claim for which he has a lien, to obtain the benefit of this section, shall commence an action to enforce such lien within the time prescribed by this Act, and shall register a certificate as required by sections 23, 24 or 25, but no further proceedings shall be taken in the action until the expiration of such extension of time. 10 Edw. VII. c. 69, s. 28.

Proving claim in action by another lien holder.

29. Where the period of credit in respect of a claim has not expired, or where there has been an extension of time for payment of the claim, the lien holder may nevertheless, if an action is commenced by any other person to enforce a lien against the same property, prove and obtain payment of his claim in such action as if the period of credit or the extended time had expired. 10 Edw. VII. c. 69, s. 29.

LIEN HOLDER'S RIGHT TO INFORMATION.

Lien holder's right to information from owner as to terms of contract.

30.—(1) Any lien holder may at any time demand of the owner or his agent the terms of the contract or agreement with the contractor for and in respect of which the work, service or material is or is to be performed or furnished or placed, and if such owner or his agent does not, at the time of such demand or within a reasonable time thereafter, inform the person making such demand of the terms of such contract or agreement, and the amount due and unpaid upon such contract or agreement, or if he knowingly falsely states the terms of the contract or agreement, or the amount due or unpaid thereon, and if the person claiming the lien sustains loss by reason of such refusal or neglect or false statement, the owner shall be liable to him in an action therefor for the amount of such loss.

Order for inspection of contract by lien holders.

(2) The court, judge, or officer having jurisdiction to try an action to realize a lien may, on a summary application at any time before or after an action is commenced for the enforcement of such lien, make an order requiring the owner or his agent to produce and allow any lien holder to inspect

any such contract or agreement upon such terms as to costs as he may deem just. 10 Edw. VII. c. 69, s. 30.

ACTION TO REALIZE CLAIM.

31.—(1) A lien may be realized by action in the Supreme Court, according to the ordinary procedure of that court, excepting where the same is varied by this Act. Mode of realizing lien.

(2) Without issuing a writ of summons an action shall be commenced by filing in the proper office a statement of claim, verified by affidavit, Form 5. Statement of claim.

(3) The statement of claim shall be served within one month after it is filed, but a judge or officer having jurisdiction to try the action may extend the time for service thereof, and the time for delivering the statement of defence shall be the same as for entering an appearance in an action in the Supreme Court. Service.

(4) It shall not be necessary to make any lien holders parties defendant to the action, but all lien holders served with the notice of trial shall for all purposes be deemed parties to the action. 10 Edw. VII. c. 69, s. 31. Parties.

32. Any number of lien holders claiming liens on the same land may join in an action, and an action brought by a lien holder shall be taken to be brought on behalf of the other lien holders. 10 Edw. VII. c. 69, s. 32. Lien holders joining in action.

33. The action may be tried before the Master in Ordinary, a local master of the Supreme Court, an official referee, or a Judge of the County or District Court, in any county or district in which the land is situate, or before a Judge of the Supreme Court. 10 Edw. VII. c. 69, s. 33. Who may try action to enforce lien.

34. The Master in Ordinary, the Local Masters, Official Referees, and the Judges of the County and District Courts, in addition to their ordinary powers, shall have all the jurisdiction, powers and authority of the Supreme Court to try and completely dispose of the action and all questions arising therein. 10 Edw. VII. c. 69, s. 34. Powers of certain officers.

35. Where more actions than one are brought to realize liens in respect of the same land a Judge or officer having jurisdiction to try such actions may, on the application of any party to any one of them, or on the application of any other person interested, consolidate all such actions into one action, and may give the conduct of the consolidated action to any plaintiff as he may see fit. 10 Edw. VII. c. 69, s. 35. Consolidation of actions.

36. Any lien holder entitled to the benefit of an action may apply for the carriage of the proceedings, and the Judge Transferring carriage of proceedings.

or officer may make an order giving such lien holder the carriage of the proceedings. 10 Edw. VII. c. 69, s. 36.

Appointing
day for trial.

37.—(1) After the delivery of the statement of defence where the plaintiff's claim is disputed, or after the time for delivery of defence in all other cases, where it is desired to try the action otherwise than before a Judge of the Supreme Court, either party may apply to a Judge or officer who has jurisdiction to try the action to fix a day for the trial thereof, and the Judge or officer shall appoint the day and place of trial.

Notice of trial
and service of.

(2) The party obtaining an appointment for the trial shall, at least eight clear days before the day appointed, serve notice of trial, Form 6, upon the solicitors for the defendants who appear by solicitors, and upon defendants who appear in person, and on all lien holders who have registered their claims as required by this Act, or who are known to him, and on all other persons having any charge, incumbrance or claim on the land subsequent in priority to the lien, who are not parties, and such service shall be personal unless otherwise directed by the Judge or officer who may direct in what manner the notice of trial may be served.

Trial.

(3) The Judge or officer shall try the action and all questions which arise therein or which are necessary to be tried in order to completely dispose of the action and to adjust the rights and liabilities of the persons appearing before him or upon whom the notice of trial has been served, and shall take all accounts, make all enquiries, give all directions, and do all other things necessary to finally dispose of the action and of all matters, questions, and accounts arising therein or at the trial, and to adjust the rights and liabilities of and give all necessary relief to all parties to the action and all persons who have been served with the notice of trial, and shall embody the results in a judgment, Form 7.

Sale.

(4) The Judge or officer may order that the estate or interest on which the lien attaches be sold, and where, by the judgment, a sale is directed he may direct the sale to take place at any time after the judgment, allowing a reasonable time for advertising such sale.

Sale of
materials.

(5) The Judge or officer may also direct the sale of any materials and authorize the removal thereof.

Letting in
lien holders
who have not
proved their
claims at
trial.

(6) A lien holder who has not proved his claim at the trial, on application to the Judge or officer before whom the action was tried, may be let in to prove his claim on such terms as to costs and otherwise as may be deemed just at any time before the amount realized in the action for the satisfaction of liens has been distributed, and where such a claim is allowed the judgment shall be amended so as to include such claim.

(7) Every lien holder for an amount not exceeding \$100 may be represented by a solicitor or by an agent who is not a solicitor. 10 Edw. VII. c. 69, s. 37. Right of lien holders to representation.

38. Where a sale is had the Judge or officer with whose approbation the sale takes place shall make a report thereon and therein direct to whom the money realized shall be paid, and may add to the claim of the person conducting the sale his actual disbursements in connection therewith, and where enough to satisfy the judgment and costs is not realized he shall certify the amount of the deficiency and the names of the persons, with their amounts, who are entitled to recover the same, and the persons by the judgment adjudged to pay the same, and the persons entitled may enforce payment by execution or otherwise as on a judgment. 10 Edw. VII. c. 69, s. 38. Report where sale is had.

39. Where property subject to a lien is sold in an action to enforce a lien, every lien holder shall be entitled to share in the proceeds of the sale in respect of the amount then owing to him, although the same or part thereof was not payable at the time of the commencement of the action or is not then presently payable. 10 Edw. VII. c. 69, s. 39. Right of lien holders whose claims are not payable to share in proceeds.

NEW TRIAL AND APPEAL.

40.—(1) Where the aggregate amount of the claims of the plaintiff and all other persons claiming liens is not more than \$100 the judgment shall be final and without appeal, but the Judge or officer who tried the action may, upon application within fourteen days after judgment is pronounced, grant a new trial. Where judgment of court of first instance to be final.

(2) Where the aggregate amount of the claims of the plaintiff and all other persons claiming liens is more than \$100 and not more than \$500 any person affected by the judgment may appeal therefrom to a Divisional Court, whose judgment shall be final and without appeal. Where appeal to Divisional Court final.

(3) In all other cases an appeal shall lie and may be had in like manner and to the same extent as from the decision of a Judge trying an action in the Supreme Court without a jury. 10 Edw. VII. c. 69, s. 40. Appeal in other cases.

FEEES AND COSTS.

41.—(1) No fees in stamps or money shall be payable to any officer, nor on any filing, order, record, judgment, or other proceeding, excepting that every person other than a wage-earner shall, on filing his statement of claim where he is a plaintiff, or on filing his claim where he is not a plaintiff, pay in stamps \$1 on every \$100 or fraction of \$100 of the amount of his claim up to \$1,000. Limit of fees in money or stamps.

Fees of
local master.

(2) When the proceedings are taken before a local master who is paid by fees such amount shall be payable to him in cash instead of in stamps. 10 Edw. VII. c. 69, s. 41.

Limit of costs
to plaintiff.

42. The costs of the action, exclusive of actual disbursements awarded to the plaintiffs and successful lien holders, shall not exceed in the aggregate twenty-five per cent. of the total amount awarded to them by the judgment, and shall be apportioned and borne in such proportion as the Judge or officer who tries the action may direct. 10 Edw. VII. c. 69, s. 42.

Limit of costs
to be awarded
against
plaintiffs.

43. Where costs are awarded against the plaintiff or other persons claiming liens they shall not exceed twenty-five per cent. of the claim of the plaintiff and the other claimants, besides actual disbursements, and shall be apportioned and borne as the Judge or officer may direct. 10 Edw. VII. c. 69, s. 43.

Costs where
least expen-
sive course
not taken.

44. Where the least expensive course is not taken by a plaintiff the costs allowed to him shall in no case exceed what would have been incurred if the least expensive course had been taken. 10 Edw. VII. c. 69, s. 44.

Costs of draw-
ing and regis-
tering and
vacating
registration of
lien.

45. Where a lien is discharged or vacated under section 27, or where judgment is given in favour of or against a claim for a lien, in addition to the costs of the action, the Judge or officer may allow a reasonable amount for the costs of drawing and registering the claim for lien or of vacating the registration thereof. 10 Edw. VII. c. 69, s. 45.

Costs not
otherwise
provided for.

46. The costs of and incidental to all applications and orders not otherwise provided for shall be in the discretion of the Judge or officer. 10 Edw. VII. c. 69, s. 46.

PAYMENT OUT OF COURT.

Payments out
of court.

47.—(1) Except in actions tried by a Judge of the Supreme Court, the judge or officer who tries the action, where money has been paid into court and the time for payment out has arrived, shall forward a requisition for cheques with a certified copy of his judgment and of the report on sale, if any, to the Accountant of the Supreme Court who shall, upon receiving the same, make out and return to the Judge or officer cheques for the amounts payable to the persons mentioned in the requisition, and the Judge or officer, on receipt of cheques, shall distribute them to the persons entitled.

Fees.

(2) No fees or stamps shall be payable on any cheques or on proceedings to pay money into court or to obtain money out of court, in respect of a claim for lien, but sufficient postage stamps to prepay a return registered letter shall be

enclosed with every requisition for cheques. 10 Edw. VII. c. 69, s. 47.

JUDGMENTS IN ACTIONS.

48. All judgments in favour of lien holders shall adjudge that the party personally liable for the amount of the judgment shall pay so much of any deficiency which may remain after sale of the property directed to be sold as might have been recovered in an ordinary action against him, and where on the sale enough to satisfy the judgment and costs is not realized such part of the deficiency may be recovered by execution against the property of such party. 10 Edw. VII. c. 69, s. 48.

Form of judgment in favour of lien holders.

49. Where a claimant fails to establish a valid lien he may nevertheless recover a personal judgment against any party to the action for such sum as may appear to be due to him and which he might recover in an action against such party. 10 Edw. VII. c. 69, s. 49.

Personal judgment when claim for lien fails.

LIENS ON CHATTELS.

50.—(1) Every mechanic or other person who has bestowed money or skill and materials upon any chattel or thing in the alteration and improvement of its properties, or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon such chattel or thing for the amount or value of the money or skill and materials bestowed shall, while such lien exists but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid, have the right, in addition to any other remedy to which he may be entitled, to sell by auction the chattel or thing, on giving one week's notice by advertisement in a newspaper published in the municipality in which the work was done, or in case there is no newspaper published in such municipality then in a newspaper published nearest thereto, setting forth the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence, if any, of the owner, if he is a resident of such municipality.

Right of mechanics entitled to lien on a chattel to sell the chattel.

(2) Such mechanic or other person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale, and shall, upon application, pay over any surplus to the person entitled thereto. 10 Edw. VII. c. 69, s. 50.

Application of proceeds of sale.

FORM 1.

(Sections 17-22.)

CLAIM FOR LIEN.

A. B. (name of claimant) of (here state residence of claimant), (if claimant is a personal representative or assignee set out the facts) under The Mechanics and Wage-Earners Lien Act claims a lien upon the estate of (here state the name and residence of owner of the land upon which the lien is claimed), in the undermentioned land in respect of the following work [or service or materials] that is to say (here give a short description of the nature of the work done or to be done, or materials furnished or to be furnished, and for which the lien is claimed.) which work [or service] was [or is to be] done [or materials were or are to be furnished] for (here state the name and residence of the person upon whose request the work is done or to be done, or the materials furnished or to be furnished) on or before the day of 19

The amount claimed as due [or to become due] is \$

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Where credit has been given, insert: The work was done [or materials were furnished] on credit, and the period of credit agreed to expired [or will expire] on the day of 19

Dated at this day of 19
(Signature of claimant.)

10 Edw. VII. c. 69, Form 1.

FORM 2.

(Sections 17-22.)

CLAIM FOR LIEN FOR WAGES.

A. B. (name of claimant) of (here state residence of claimant), (if claimant is a personal representative or assignee set out the facts) under The Mechanics and Wage-Earners Lien Act claims a lien upon the estate of (here state the name and residence of owner of the land upon the which the lien is claimed), in the undermentioned land in respect of work performed (or to be performed) thereon while in the employment of (here state the name and residence of the person upon whose request the work was or is to be performed) on or before the day of 19

The amount claimed as due [or to become due] is \$

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated at this day of 19
(Signature of claimant.)

10 Edw. VII. c. 69, Form 2.

FORM 3.

(Sections 17-22.)

CLAIM FOR LIEN FOR WAGES BY SEVERAL CLAIMANTS.

The following persons claim a lien under *The Mechanics and Wage Earners' Lien Act* upon the estate of (*here state the name and residence of the owner of land upon which the lien is claimed*) in the undermentioned land in respect of wages for labour performed (*or to be performed*) thereon while in the employment of (*here state name and residence or names and residences of employers of the several persons claiming the lien*).

A.B. of (*residence*) \$ for wages.

C.D. " \$ "

E.F. " \$ "

The following is the description of the land to be charged (*here set out a concise description of the land to be charged sufficient for the purpose of registration*).

Dated at this day of 19 ,
(*Signatures of the several claimants.*)

10 Edw. VII. c. 69, Form 3.

FORM 4.

(Sections 17-22.)

AFFIDAVIT VERIFYING CLAIM.

I, A.B., named in the above (*or annexed*) claim, make oath that the said claim is true.

Or, We, A.B., and C.D., named in the above (*or annexed*) claim, make oath, and each for himself makes oath that the said claim, so far as relates to him, is true.

[*Where affidavit is made by agent or assignee a clause must be added to the following effect:—I have full knowledge of the facts set forth in the above (or annexed) claim.*]

Sworn before me at , in the
county of , this ,
day of 19 .

Or, The said A.B. and C.D. were sever-
ally sworn before me at , in the
county of this day of ,
19 .

Or, The said A.B. was sworn before me
at , in the county of ,
this day of 19 .

10 Edw. VII. c. 69, Form 4.

FORM 5.

(Section 31.)

AFFIDAVIT VERIFYING CLAIM ON COMMENCING AN ACTION.

(Style of Court and Cause.)

I, _____, make oath and say, that I have read (or heard read), the foregoing statement of claim, and that the facts therein set forth are, to the best of my knowledge and belief, true, and the amount claimed to be due to me in respect of my lien is the just and true amount due and owing to me after giving credit for all the sums of money or goods or merchandise to which (naming the debtor) is entitled to credit as against me.

Sworn before me, etc.

10 Edw. VII. c. 69, Form 5.

FORM 6

(Section 37.)

NOTICE OF TRIAL.

(Style of Court and Cause.)

Take notice that this action will be tried at the _____, in the _____ of _____, in the County (or District) of _____, on the _____ day of _____ by _____ and at such time and place the _____ will proceed to try the action and all questions which arise in or which are necessary to be tried completely to dispose of the action and to adjust the rights and liability of the persons appearing before him, or upon whom this notice of trial has been served, and at such trial he will take all accounts, make all enquiries and give all directions and do all things necessary to try and otherwise finally dispose of this action, and of all matters, questions, and accounts arising therein and will give necessary relief to all parties.

And further take notice that if you do not appear at the trial and prove your claim, if any, (or your defence, if any) to the action the proceedings will be taken in your absence and you may be deprived of all benefit of the proceedings and your rights disposed of in your absence.

This is a Mechanics Lien action brought by the above named plaintiff against the above named defendants to enforce a Mechanics Lien against the following lands:—(set out description of lands).

This notice is served by etc.

Dated

19 ____.

To

10 Edw. VII. c. 69, Form 6.

FORM 7.

(Section 37.)

JUDGMENT.

In the Supreme Court of Ontario,

Monday, the

day of

18

Name of Judge or officer:

William Spencer, Plaintiff,

and

Thomas Burns, Defendant.

This action coming on for trial before at upon opening of the matter and it appearing that the following persons have been duly served with notice of trial herein, (*set out names of all persons served with notice of trial*) and all such persons (*or as the case may be*) appearing at the trial [*or and the following persons not having appeared set out names of non-appearing persons*] and upon hearing the evidence adduced and what was alleged by counsel for the plaintiff and for C.D. and E.F. and the defendant [*or and by A.B. appearing in person*].

1. This Court doth declare that the plaintiff and the several persons mentioned in the first schedule hereto are respectively entitled to a lien under *The Mechanics and Wage-Earners Lien Act*, upon the land described in the second schedule hereto, for the amounts set opposite their respective names in the 2nd, 3rd and 4th columns of the said first schedule, and the persons primarily liable for the said claims respectively are set forth in the 5th column of the said schedule.

2. [And this Court doth further declare that the several persons mentioned in schedule 3 hereto are also entitled to some lien, charge or incumbrance upon the said land for the amounts set opposite their respective names in the 4th column of the said schedule 3, *according to the fact*].

3. And this Court doth further order and adjudge that upon the defendant (A.B., the owner) paying into court to the credit of this action the sum of (*gross amount of liens in schedules 1 and 3 for which owner is liable*) on or before the day of next, that the said liens in the said 1st schedule mentioned be and the same are hereby discharged, [and the several persons in the said 3rd schedule are to release and discharge their said claims and assign and convey the said premises to the defendant (*owner*) and deliver up all documents on oath to the said defendant (*owner*) or to whom he may appoint] and the said money so paid into court is to be paid out in payment of the claims of the said lien holders (*or and incumbrancers*).

4. In case the said defendant (*owner*) shall make default in payment of the said money into court this Court doth order and adjudge that the said land be sold with the approbation of the Master of this Court at and that the purchase money be paid into court to the credit of this action and that all proper parties do join in the conveyances as the said Master shall direct.

5. And this Court doth order and adjudge that the said purchase money be applied in or towards payment of the several claims in the said 1st [and 3rd] schedule [s] mentioned as the said Master shall direct, with subsequent interest and subsequent costs to be computed and taxed by the said Master.

6. And this Court doth further order and adjudge that in case the said purchase money shall be insufficient to pay in full the claims of the several persons mentioned in the said 1st schedule, the persons primarily liable for such claims as shewn in the said 1st schedule do pay to the persons to whom they are respectively primarily liable the amount remaining due to such persons forthwith after the same shall have been ascertained by the said Master.

7. [And this Court doth declare that _____ have not proved any lien under *The Mechanics and Wage-Earners Lien Act*, and that they are not entitled to any such lien, and this Court doth order and adjudge that the claims of liens registered by them against the land mentioned in the said 2nd schedule be and the same are hereby discharged, *according to the fact*].

10 Edw. VII. c. 69, Form 7.

SCHEDULE 1.

Names of lien holders entitled to mechanics liens.	Amount of debt and interest (if any).	Costs.	Total.	Names of primary debtors.

(Signature of officer.)

10 Edw. VII. c. 69, Schedule 1.

SCHEDULE 2.

The lands in question in this matter are

(Set out by a description sufficient for registration purposes.)

(Signature of officer.)

10 Edw. VII. c. 69, Schedule 2.

SCHEDULE 3.

Names of persons entitled to incumbrances other than mechanics' liens.	Amount of debt and interest (if any).	Costs.	Total.

(Signature of officer.)

10 Edw. VII. c. 69, Schedule 3.

CHAPTER 141.

The Woodman's Lien for Wages Act.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title. **1.** This Act may be cited as *The Woodman's Lien for Wages Act*. 10 Edw. VII. c. 70, s. 1.

Application of Act. **2.** This Act shall apply only to the Provisional County of Haliburton and to the Provisional Judicial Districts. 10 Edw. VII. c. 70, s. 2.

Interpretation. **3.** In this Act,

"Bailiff." (a) "Bailiff" shall include a constable who under *The Division Courts Act* may execute an attachment or perform other service.
Rev. Stat. c. 63.

"Labour." (b) "Labour" shall mean and include cutting, skidding, felling, hauling, scaling, banking, driving, running, rafting or booming any logs or timber, and any work done by cooks, blacksmiths, artisans and others usually employed in connection therewith;

"Logs or timber." (c) "Logs or timber" shall mean and include logs, cordwood, timber, cedar posts, telegraph poles, railroad ties, tan bark, pulpwood, shingle bolts and staves or any of them. 10 Edw. VII. c. 70, s. 3.

Proceedings in Provisional County of Haliburton. **4.** Wherever in this Act any act is required to be done by, or any paper to be filed or proceedings taken in the office of the Clerk of the District Court of a District, or jurisdiction is conferred upon a District Court or the Judge thereof, the like acts may be done, papers filed and proceedings taken by and in the office of the Clerk of the County Court of the County of Victoria, and the like jurisdiction may be exercised by that court or a Judge thereof in respect of matters arising in the Provisional County of Haliburton. 10 Edw. VII. c. 70, s. 4.

Contracts waiving application of Act to be void. **5.—(1)** Every agreement, verbal or written, express or implied, on the part of any person employed in labour that this Act shall not apply, or that the remedies provided by

it shall not be available for the benefit of such person, shall be null and void.

(2) This section shall not apply to any manager, officer Exceptions. or foreman, or to any person whose wages are more than \$3 a day. 10 Edw. VII. c. 70, s. 5.

6.—(1) A person performing labour shall have a lien upon Lien for labour on logs or timber. the logs or timber in connection with which the labour is performed for the amount due for such labour, and the same shall have precedence over all other claims or liens thereon, except a claim or lien of the Crown for any dues or charges or which a timber slide company or any owner of a slide or boom may have thereon for tolls.

(2) A contractor who has entered into any agreement Contractors, with respect to labour or services to be performed on timber got out for export. under the terms of which he himself or by others in his employ has cut, removed, taken out or driven logs or timber, shall be deemed to be a person performing labour upon logs or timber within the meaning of this section, and such cutting, removal, taking out and driving shall be deemed to be the performance of labour within the meaning of this section. 10 Edw. VII. c. 70, s. 6.

7. The lien shall cease unless the claim therefor is filed and Lien to cease unless proceedings taken. proceedings are taken to enforce the same as hereinafter provided. 10 Edw. VII. c. 70, s. 7.

8.—(1) The person claiming the lien shall state his claim Claim of lien to be filed. in writing, Form I, setting out briefly the nature of the claim, the amount claimed to be due and a description of the logs or timber upon which the lien is claimed.

(2) The claim shall be verified by the affidavit of the Verified by affidavit. claimant, his solicitor or agent.

(3) In the case of a contractor coming within the provi- Time for filing claim. sions of subsection 2 of section 6 the claim and affidavit shall be filed on or before the first day of September next Contractors. following the performing of the labour.

(4) In other cases, if the labour was performed between Wage-earners. the first day of October and the first day of April next thereafter, the claim shall be filed on or before the 30th day of the same month of April, but if the labour was performed on or after the 1st day of April and before the 1st day of October in any year the claim shall be filed within thirty days after the last day on which such labour or any part thereof was performed. 10 Edw. VII. c. 70, s. 8.

9.—(1) Except as hereinafter provided the claim and Place for filing claim. affidavit shall be filed in the office of the District Court of the Provisional Judicial District in which the labour or some part thereof was performed.

Where labour
performed
in certain
localities.

(2) Where the labour was performed upon logs or timber got out to be run down or which have been run down any of the rivers or streams flowing into the Georgian Bay, Lake Huron, Lake Superior, Lake of the Woods, Rainy Lake or Rainy River or Pigeon River, the claim may, at the option of the claimant, be filed in the office of the Clerk of the District Court of the district in which the labour was performed or in the office of the Clerk of the District Court of the district in which the drive terminates or reaches the waters of such bay, lake or river.

In Haliburton.

(3) Where the labour or some part of it was performed in the Provisional County of Haliburton the claim may be filed in the office of the Clerk of the County Court of the County of Victoria. 10 Edw. VII. c. 70, s. 9.

Sale not to
affect lien.

10. No sale or transfer of the logs or timber during the time limited for the filing of the claim and previous to the filing thereof, or after the filing thereof and during the time limited for the enforcement thereof, shall affect the lien but the same shall remain in force against such logs and timber in whosoever possession the same shall be found. 10 Edw. VII. c. 70, s. 10.

Enforcement
of liens by
suit in
District or
Division
Courts.

11.—(1) Any person having a lien upon logs or timber may enforce the same by suit, where the claim does not exceed \$200, in the Division Court within whose jurisdiction the logs or timber or any part thereof may be at the time of the commencement of the suit, or, where the claim exceeds \$200, in the proper District Court where the claim is filed, and such suit may be commenced to enforce such lien, if the claim is then payable, immediately after the filing of the claim, or, if credit has been given, immediately after the expiry of the period of credit, and such lien shall cease unless the proceedings to enforce the same are commenced within 30 days after the filing of the claim or after the expiry of the period of credit.

Defendant.

(2) In all such suits the person liable for the payment of the claim shall be made the party defendant.

On whom writ
to be served.

(3) Where the defendant is not the owner of the logs a copy of the writ shall be served on the owner as well as the defendant, or the person or agent in whose possession, custody or control they may be found, or the person in charge of the operations in respect of which the claim of lien arose.

Owner may
be made
defendant.

(4) The owner may, on his own application, or by direction of the Judge, be made a party defendant. 10 Edw. VII. c. 70, s. 11.

Procedure.

12.—(1) There shall be attached to or endorsed upon the writ or summons a copy of the claim filed, and no statement of claim shall be necessary unless ordered, and no pleading

or notice of dispute or defence other than such as is required in a suit or proceeding in a Division Court shall be necessary whether the suit is brought in a District or in a Division Court.

(2) Where no dispute or defence is filed judgment may ^{Where no defence filed.} be signed and execution issued.

(3) The Court or Judge may order particulars to be given ^{Powers of Court.} or amendments to be made, or may add or strike out the names of parties and may set aside judgment and permit a dispute or defence to be filed, on such terms as may appear just.

(4) The writ or summons shall be in the form, as nearly as ^{Form of writ and practice.} may be, of that in use in the Court in which it is issued, but the practice thereafter shall follow as nearly as may be that of the Division Court.

(5) A writ or summons may be served anywhere in Ontario ^{Service of process.} in the same manner as in other cases.

(6) The judgment shall declare that the same is for wages, ^{Form of judgment.} the amount thereof and costs, and that the plaintiff has a lien therefor on the property described when such is the case.
10 Edw. VII. c. 70, s. 12.

13. Where an execution has been placed in the hands of ^{Procedure subsequent to execution in certain cases.} a sheriff or bailiff for execution, and no attachment has been issued, the proceedings for the enforcement of the lien shall be by sale under the execution, and the proceedings relating to proof of other claims and the payment of money into court and the distribution of the money and otherwise shall, as far as practicable, be the same as is hereinafter provided for proceedings upon and subsequent to an attachment.
10 Edw. VII. c. 70, s. 13.

14.—(1) Where an attachment issues in the first instance ^{Procedure attachment in first instance.} the statement of claim and defence and proceedings to judgment shall be the same as where a suit has been begun by writ or summons.

(2) Where an attachment issues after proceedings have ^{Where attachment after action.} been commenced by writ or summons the proceedings, except such as are necessary to be taken under the attachment, shall be carried to judgment under the writ of summons. 10 Edw. VII. c. 70, s. 14.

15. The forms of attachment shall be as nearly as may be ^{Form of attachment.} the same as are in use in the District Courts or in the Division Courts. 10 Edw. VII. c. 70, s. 15.

16.—(1) Whether the proceedings are commenced by writ or summons or attachment the Judge may direct that the ^{Summary disposal of cases} same shall be disposed of summarily by him without waiting

for the regular sittings of the Court, upon such terms as to notice and otherwise as he may deem proper, and the same may be so disposed of.

Powers of
Judge.

(2) The Judge may set aside an attachment or seizure or direct the release of logs or timber that have been seized on such terms as he may deem proper. 10 Edw. VII. c. 70. s. 16.

When attach-
ment to issue
from Division
Court.

17. Where the amount of the claim does not exceed \$200, and is not less than \$10, upon the production and filing of a copy of the claim and affidavit and an affidavit of the claimant verifying the claim, and showing that the same has been filed and stating that

- (a) he has good reason to believe and does believe that the logs or timber are about to be removed out of Ontario, or
- (b) that the person indebted has absconded from Ontario with intent to defraud or defeat his creditors, or
- (c) that the logs or timber are about to be cut into lumber or other timber so that the same cannot be identified, and
- (d) that he is in danger of losing his claim if attachment does not issue,

Rev. Stat.
c. 63.

and if affidavits of two persons corroborating the affidavit of the plaintiff in respect of clauses (a), (b) or (c) are also filed the Clerk of the proper Division Court shall issue a warrant, as in the case of an attachment under section 199 of *The Division Courts Act*, directed to the bailiff of the Division Court commanding such bailiff to attach, seize, take and safely keep such logs or timber or a sufficient part thereof to satisfy the amount claimed and the costs of the suit and of the proceedings to enforce the lien, and to return the warrant forthwith to the Court out of which the same issued. 10 Edw. VII. c. 70, s. 17.

When attach-
ment to issue
out of
District
Court.

18.—(1) Where the amount claimed exceeds \$200, upon the filing of a copy of the claim and affidavit, the Clerk of the District Court of the district where the action may be brought, upon the filing of an affidavit made by the claimant showing such facts as would authorize the issue of an attachment under the next preceding section and such affidavit in corroboration as is provided in the next preceding section, shall issue a writ of attachment directed to the sheriff of the district commanding him to attach, seize and take and safely keep the logs or timber or a sufficient part thereof to satisfy the amount claimed and the costs of the suit and of the proceedings to enforce the lien.

Subsequent
seizure.

(2) Where additional claims are made, or the amount of the claim is increased or a sufficient seizure has not been

made, a second or subsequent seizure may be made either under the execution or attachment. 10 Edw. VII. c. 70, s. 18.

19.—(1) The warrant or writ of attachment shall also, where no writ or summons has issued, summon the defendant to appear before the District Court or Division Court out of which the attachment issued, and a copy of the writ of attachment shall be served upon the defendant, and, if the defendant is not the owner of the logs or timber described in the warrant or writ, a copy of the warrant or writ of attachment shall also be served upon the owner of the logs or timber or upon the person or agent in whose possession, custody or control they may be found.

Warrant or writ to be served on defendant and the owner of logs.

(2) When a warrant or writ is served upon a person in possession an order of the Judge allowing the service shall be necessary.

When order allowing service necessary.

(3) Where the defendant or the owner of the logs or timber cannot be found within the district, and there is no one in possession of the logs or timber, a copy of the warrant or writ may be forwarded to the sheriff of any county or district or the bailiff of any Division Court within whose jurisdiction the defendant or the owner resides or may be found, and such copy may be served by the sheriff or the bailiff upon the defendant or the owner.

Service where no one in possession of logs.

(4) The owner may, on his own application or by direction of the Judge, be made a party defendant.

Owner may be made a party.

(5) If the defendant or the owner cannot be found within Ontario or the owner cannot be ascertained, and no person is in possession of the logs or timber, the warrant or writ may be served in such manner as the Judge directs.

When defendant or owner not in Province, etc.

(6) Notwithstanding that a defence has not been entered the Judge may admit the defendant and the owner or either of them to make full defence upon such terms as he may deem just. 10 Edw. VII. c. 70, s. 19.

Admission of parties to make defence.

20. A sheriff or bailiff shall not seize or detain under a warrant or writ of attachment any logs or timber when in transit from the place where cut to the place of destination when such place of destination is within the district in which the proceedings were commenced, but if such logs or timber are so in transit, or are in the possession of any person for the purpose of being driven or sorted and delivered to the owner, or to satisfy any statutory lien, attachment of the logs or timber may be made by serving a copy of the warrant or writ upon the person in whose possession, custody or control they are, who shall from the time of such service hold the same, both on his own behalf and for the sheriff or bailiff to the extent of the lien, until the logs or timber have reached their place of destination or are driven or sorted, as the case may

Logs or timber in transit within district not to be detained.

Service upon party in charge.

be, and when they have reached their place of destination or are driven or sorted the sheriff or bailiff may receive the logs or timber from such person, and the statutory lien of such person shall not be released by the holding of such sheriff or bailiff. 10 Edw. VII. c. 70, s. 20.

Separation of logs,

Rev. Stat. c. 131.

21. The claimant or the plaintiff, and the sheriff or bailiff may, by leave of the Judge, take any proceedings which the owner of any logs or timber may take under *The Saw Logs Driving Act* for the purpose of procuring the separation of any logs or timber so seized by the sheriff or bailiff under this Act from other logs or timber with which they have become intermixed, or a sale may be made without such separation if the Judge so directs. 10 Edw. VII. c. 70, s. 21.

Sheriff or Bailiff to restore possession upon execution of bond.

22. In case of an attachment, if the owner of the logs or timber or any person on his behalf executes and files with the clerk of the court out of which the attachment issued a good and sufficient bond to the person claiming the lien, executed by two sureties and approved by the clerk conditioned for the payment of the claim and of all damages, costs, charges, disbursements and expenses that may be recovered by the claimant in such proceedings, together with the amount for which a lien is claimed in any other suit, the clerk shall issue an order to the sheriff or bailiff having in charge the logs or timber directing their release, and upon service of such order upon the sheriff or bailiff he shall release the same. 10 Edw. VII. c. 70, s. 22.

Notice of dispute.

23.—(1) Any person who has been served with a copy of the warrant or writ of attachment and who desires to dispute the claim shall, within fourteen days after such service, enter in the court in which proceedings are pending a notice that he disputes the claim in whole or in part.

If no notice of dispute entered judgment may be entered.

(2) If no notice of dispute is entered judgment may be entered as in the case of default, and the practice and procedure shall be the same as in a suit begun by writ or summons. 10 Edw. VII. c. 70, s. 23.

Persons served with attachment may pay amount claimed into court.

24.—(1) The defendant may, at any time before the sale of the logs or timber, pay into court the amount for which the lien is claimed, together with the amount for which a lien is claimed in any other suit, and also the costs of the proceedings to the date of such payment to be taxed by the clerk of the court if required, and shall thereupon be entitled to a certificate vacating the liens.

Subsequent procedure.

(2) Upon such certificate being filed with the clerk of the court in which the claim was filed the liens shall be vacated and all further proceedings thereon shall cease, and the defendant shall be entitled to an order directing the delivery up of the logs or timber seized under the attachment, or the

cancellation of any bond given under section 22. 10 Edw. VII. c. 70, s. 24.

25.—(1) After the expiration of the time within which a notice of dispute may be entered the Judge shall, upon the application of the plaintiff, appoint a day upon which all persons claiming a lien on the logs or timber shall appear before him for the adjustment of their claims and the settlement of accounts.

Day to be fixed by advertisement for hearing.

(2) The appointment shall be served upon the defendants and upon the owner, if the Judge so directs, and shall also, if the Judge so directs, be published once a week for two weeks before the day appointed in a newspaper having a general circulation in the district in which proceedings are pending.

Service of appointment and advertisement.

(3) A copy of the appointment shall also be sent by registered post to every claimant known to the plaintiff and to the Minister of Lands, Forests and Mines, at least two weeks before the day appointed, directed to the post office address of such claimant where the same is known, and if not known then to his last known address. 10 Edw. VII. c. 70, s. 25.

Notification of lien-holders and the Minister.

26.—(1) Upon the day named in the appointment the persons served with a copy thereof, and all other persons claiming a lien on the logs or timber who have prior to that date filed with the clerk a notice claiming a lien on the logs or timber and stating the nature and amount of their claims, shall attend before the Judge.

Parties filing notices of disputes or claims to attend on day named in appointment.

(2) Where a claim is brought in pursuant to the notice it may be established *prima facie* by affidavit, but any person interested may cross-examine a deponent, and may require that the claim be established as in other cases.

Proof of claims.

(3) The Judge shall hear all parties and take all accounts necessary to determine the amounts due to the claimants, and shall tax costs, and determine by whom the same shall be paid, and settle priorities and generally determine all such matters as may be necessary for the adjustment of the rights of all parties. 10 Edw. VII. c. 70, s. 26.

Judge to hear all parties, take accounts, etc.

27.—(1) At the conclusion of the enquiry the Judge shall make his report and order which shall state his findings and direct the payment into court within ten days thereafter of the amounts found due and the costs, and, in default of payment, that the logs or timber shall be sold by the sheriff or bailiff for the satisfaction thereof.

Order to be made by Judge at conclusion of enquiry.

(2) In default of payment into court within the time named in the order the logs or timber shall, within twenty days thereafter, be sold by the sheriff or bailiff in the same manner and subject to the same provisions of law as goods seized or taken in execution, or after such additional publicity has been given to the sale as the Judge may direct.

In default of payment into court logs or timber to be sold.

Application
proceeds of
sale.

(3) The amount realized by the sale shall, after deducting the expenses thereof, and the fees and poundage of the sheriff or bailiff, be paid into court and shall be paid out by the clerk to the parties entitled thereto under the order of the Judge.

Judge to
apportion.

(4) Where the amount realized upon the sale is not sufficient to pay the claims and costs in full the Judge shall apportion the amount realized *pro rata* among the claimants.

Certificate of
balance due
after distribu-
tion to be
entered as a
judgment.

(5) Where after sale and distribution any balance remains due to any person under the order of the Judge the clerk shall, upon application of such person, give to him a certificate that such amount remains due, and such certificate may be entered as a judgment in the District Court or Division Court having jurisdiction against the person by whom the claim is directed to be paid, and execution may be issued thereupon. 10 Edw. VII. c. 70, s. 27.

Where
nothing found
due on en-
quiry, lien to
be discharged.

28. Where nothing is found due upon the several claims filed or upon the lien with respect to which proceedings have been taken the Judge may order that the lien be discharged and the logs or timber released or the security given therefor delivered up and cancelled, and may order payment of any costs which may be found due to the defendant or the owner of the logs or timber. 10 Edw. VII. c. 70, s. 28.

Costs.

29.—(1) Where the taxed costs, exclusive of necessary disbursements, which are payable out of the amount realized for the satisfaction of the lien exceed twenty-five per cent. of the amount realized such costs, upon application by any party, may be reduced by the Judge so that the same shall not in the aggregate exceed twenty-five per cent., and no more costs than such reduced amount shall be recovered between party and party or solicitor and client.

Limit of
where claim
not contested.

(2) The costs in addition to actual and necessary disbursements which may be taxed to any claimant proving an uncontested claim shall not exceed \$5 if a solicitor is employed, and where the amount claimed is within the jurisdiction of the Division Court shall not exceed \$2 where a solicitor is employed.

Where claim
contested.

(3) In case of a contest, where a solicitor is employed, the Judge may allow such costs, not exceeding in any case \$10 when taxed on the District Court scale or \$5 when taxed on the Division Court scale, in addition to actual and necessary disbursements, but where the claim does not exceed \$50 then such costs shall not exceed \$3.

Tariff.

(4) Subject to the provisions of this section the costs to be taxed to any party shall, as far as possible, be according to the tariff of costs in force as to other proceedings in the Court in which proceedings under this Act have been taken. 10 Edw. VII. c. 70, s. 29.

30.—(1) Where money paid into court as the proceeds of the sale of logs or timber is more than sufficient to satisfy the claims which have been proved with interest and costs the Judge, upon the application of any creditor within thirty days from the day fixed by the order for payment, shall order that such remaining money be paid over to the sheriff who shall hold and distribute the same as provided by *The Creditors' Relief Act* in the case of money levied under execution, and all parties having claims may take the like proceedings as those provided by *The Creditors' Relief Act* for proving claims and obtaining certificates or executions.

Disposition of balance after sale and satisfaction of liens.

Rev. Stat. c. 81.

(2) If no such application is made to the Judge within such period of thirty days the Judge may order payment out of court of any remaining money to the person entitled thereto. 10 Edw. VII. c. 70, s. 30.

Order for payment.

31. Any person affected by proceedings taken under this Act may apply to the Judge to dismiss the same for want of prosecution, and the Judge may make such order upon the application as he may deem just. 10 Edw. VII. c. 70, s. 31.

Dismissal of proceedings for want of prosecution.

32.—(1) Nothing in this Act shall deprive any person of any other remedy to which he may be entitled for the recovery of any amount due in respect of labour performed upon or in connection with any logs or timber.

Other remedies not affected.

(2) Where an action is brought to enforce a lien, but no lien is found to exist in respect of the claim, judgment may be given for any amount found due as in an ordinary action. 10 Edw. VII. c. 70, s. 32.

Where lien not established, judgment for amount found due.

33. Any number of lien holders may join in taking proceedings under this Act, or may assign their claims to any one or more persons, but the claim to be filed under section 8 shall include particular statements of the several claims joined which shall be verified by the affidavits of the persons so joining, or separate claims may be filed and one writ, summons or attachment issued on behalf of all the persons so joining. 10 Edw. VII. c. 70, s. 33.

Any number of lien holders may join in proceedings.

34. Where proceedings have been commenced in the District Court and proceedings are brought or are thereafter pending in respect of the same logs or timber, or any part of them, in a Division Court the Judge may order the proceedings in the Division Court to be adjourned before him, and shall in his inquiry include the claims in respect of which proceedings are pending in the Division Court, and thereafter all persons who have filed claims in the Division Court shall be entitled to prove their claims and to share in the benefit of the proceedings in the District Court. 10 Edw. VII. c. 70, s. 34.

Transfer of suit from Division Court in case proceedings taken in District Court.

Where suits
in several
Courts.

35. Where suits are brought in several District Courts, or in several Division Courts, the procedure under sections 25 to 27 shall be had in the District or Division Court out of which an execution or attachment first issued, unless the Judge of such court shall otherwise order. 10 Edw. VII. c. 70, s. 35.

Practice.

36. The practice and procedure in actions brought in the District Courts or in Division Courts, shall, so far as they are not inconsistent with this Act, apply to proceedings taken under this Act. 10 Edw. VII. c. 70, s. 36.

Liability for
loss occasioned by
improper
seizure.

37. Any person who unlawfully and maliciously, and without reasonable and probable cause, takes, or causes to be taken, proceedings under this Act by which logs or timber are seized, detained or sold shall be liable therefor in an action at the suit of any person aggrieved thereby, and shall also be liable for all loss and damage occasioned by such seizure by reason of such logs or timber breaking away or being scattered or lost, or otherwise. 10 Edw. VII. c. 70, s. 37.

Illegal pay-
ments.

38.—(1) No payment of wages shall be made or offered to any person for any labour performed upon or in connection with any logs or timber by any cheque, order, I.O.U., bill of exchange, promissory note, or other undertaking, other than a bank note or bill, drawn upon or payable at or within any place out of Ontario.

Penalties.

(2) Any person violating, or who shall direct or knowingly suffer his agent or servant to violate, the provisions of this section shall incur a penalty of not less than \$5 and not more than \$20, to be recovered under the provisions of *The Ontario Summary Convictions Act*. 10 Edw. VII. c. 70, s. 38.

Rev. Stat. c. 90.

Illegal pay-
ments not to
be allowed as
a defence in
any action.

39. No payment made or offered to be made in violation of section 38 shall be a defence to an action or proceeding for the recovery of wages, or be receivable in evidence therein, nor shall any such payment or offer of payment in any way affect any claim of lien for labour on logs or timber under this Act, but in case of the sale, or transfer of any instrument mentioned in section 38 in whole or in part, by the payee the consideration received by him shall be treated as payment on account. 10 Edw. VII. c. 70, s. 39.

Forms of
proceedings.

40. The Judges of the District Courts, or a majority of them, may prepare and adopt forms of writs, summonses, attachments and other forms for the more convenient carrying out of the provisions of this Act, and thereafter the same shall be used instead of the forms prescribed by this Act. 10 Edw. VII. c. 70, s. 40.

FORM 1.

(Section 8.)

CLAIM OF LIEN.

A. B., (name of claimant) of (state residence of claimant), (if claim made as assignee then say as assignee of giving name and address of assignor) under *The Woodman’s Lien for Wuges Act*, claims a lien upon certain logs or timber of (here state the name and residence of the owner of logs or timber upon which the lien is claimed if known) which logs and timber are composed of (state the kinds of logs and timber such as pine sawlogs, cedar or other posts or railway ties, shingle bolts or staves, etc., also where situate at time of filing of claim) in respect of the following work, that is to say, (here give a short description of the work done for which the lien is claimed) which work was done for (here state the name and residence of the person upon whose credit the work was done) between the day of and the day of at per (month or day as the case may be).

The amount claimed as due (or to become due) is the sum of (and when credit has been given, the said work was done on credit, and the period of credit will expire on the day of).

Dated at this day of 19 .

(Signature of Claimant).

AFFIDAVIT TO BE ATTACHED TO CLAIM.

I make oath and say that I have read (or have heard read) the foregoing claim, and that the facts therein set forth are, to the best of my knowledge and belief, true, and that the amount claimed to be due to me in respect of my lien is the just and true amount due and owing to me after giving credit for all sums of money, goods or merchandise to which the said (naming the debtor) is entitled to credit.

Sworn before me at in the district }
of this day of , 19 . }

A Commissioner.

10 Edw. VII. c. 70, Form 1.

CHAPTER 142.

An Act to secure Payment of Wages for Labour performed in the Construction of Works.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PUBLIC WORKS.

Short title. 1. This Act may be cited as *The Public and other Works Wages Act*. 10 Edw. VII. c. 71, s. 1.

Payment of wages of employees of contractors with the Crown or their sub-contractors. 2. If any contractor with His Majesty, or any sub-contractor in the construction of any public work let under contract by His Majesty, makes default in the payment of the wages of any foreman, workman or labourer employed on such work, or in the payment of any sum due by him for the labour of any such foreman, workman or labourer, or of any team employed on such work, and if a claim therefor is filed in the office of the Minister entering into such contract on behalf of His Majesty, not later than two months after the same becomes due, and satisfactory proof thereof is furnished, His Majesty may pay such claim to the extent of the amount of all moneys or securities in the hands of His Majesty for securing the performance of the contract at the time of the filing of the claim. 10 Edw. VII. c. 71, s. 2.

Out of what payable.

List of employees, etc., to be furnished when required. 3. The Minister may, in writing, require any such contractor or sub-contractor to file in the office of the Minister, not later than the fifteenth day of each month, a list showing the names, rates of wages, amounts paid and amounts due and unpaid for wages or labour done by any foreman, workman, labourer or team employed by the contractor or sub-contractor during the previous month, and such list shall be attested upon the oath of the contractor or sub-contractor or his authorized agent. 10 Edw. VII. c. 71, s. 3.

Penalty failure to furnish list. 4.—(1) Every contractor or sub-contractor who makes default in forwarding such list shall incur a penalty of not less than \$10 or more than \$100 for every day during which default continues.

How penalty enforceable. (2) The amount of such penalty, within the above limits, shall be determined by the Minister under whom the work

is being executed, and may be deducted out of the money in the hands of the Crown deposited by or owing to such contractor and shall be vested in His Majesty. 10 Edw. VII. c. 71, s. 4.

5. Where default is made by a sub-contractor in furnishing such list the penalty for such default, hereinbefore provided, may also be recovered, with costs, at the suit of the Crown in any court of competent jurisdiction. 10 Edw. VII. c. 71, s. 5.

Case of default by sub-contractor.

SUBSIDIZED WORKS.

6.—(1) Where any subsidy, advance, loan or bonus of money is authorized by this Legislature to be granted to any company or person towards the construction of any railway or other work it shall, in the absence of special provision by this Legislature to the contrary, be a condition of the grant that so much of the money may be retained as the Lieutenant-Governor in Council may think proper to secure the payment of claims for wages of persons employed on such railway or work whether by such company or by any contractor or sub-contractor, or for sums due or to become due for labour of persons or teams so employed.

Retaining portion of legislative grant and paying wages, etc., thereout.

(2) If any such claim remains unpaid for thirty days after notice thereof has been served upon the Minister charged with the duty of seeing that the conditions upon which such aid is granted are duly carried out the Lieutenant-Governor in Council may, on being satisfied that such claim is due and unpaid, direct that it be paid together with all proper costs and charges in connection therewith out of any moneys so retained. 10 Edw. VII. c. 71, s. 6.

When to be paid.

WORKS BY CHARTERED COMPANIES.

7.—(1) Every company incorporated under any Act of this Legislature shall be liable for the payment of the wages of the foremen, workmen, labourers or teams employed in the construction of any work in Ontario done by or for the company, whether directly under the company or through the intervention of any contractor or sub-contractor.

Liability of companies for wages due by contractors, etc.

(2) Nothing herein shall prejudice or affect the right of any person against any contractor or sub-contractor with whom he has contracted under any other Act or law in force in Ontario. 10 Edw. VII. c. 71, s. 7.

Saving of other rights.

8.—(1) Where any such foreman, workman or labourer is not paid his wages for himself or his team by any contractor or sub-contractor by whom he has been employed a notice stating the name of the claimant and the amount

Notice of unpaid wages.

of wages claimed, the rate of such wages, the nature and amount of work done, the time when, the place where, and the name of the contractor or sub-contractor, superintendent or foreman under whom such work was done, may be served upon the company not later than two months after such wages are earned.

Limitation of : (2) The notice shall be followed up by the commence-
time for action. ment of a suit in a court of competent jurisdiction for the collection of such wages within thirty days after the service of such notice, otherwise the liability mentioned in the last preceding section shall cease.

Service of
notice or
process.
R.S.C. c. 98,
ss. 7, 8.

(3) The notice mentioned in subsection 1, and any summons, notice, order or other process required to be served upon the company for the prosecution of such claim, may be served upon the president, vice-president, secretary, managing director, superintendent, or engineer, or any recognized officer representing the company, or by leaving it with any adult person at the office or residence of any of them.
10 Edw. VII. c. 71, s. 3.

CHAPTER 143.

An Act respecting Wages.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Wages Act*. 10 Edw. VII. Short title.
c. 72, s. 1.

2. In this Act,

“Wages” shall mean and include wages and salary whether the employment in respect of which the same is payable is by time or by the job or piece or otherwise. 10 Edw. VII. c. 72, s. 2.

Interpretation.
“Wages.”

3. Where an assignment is made for the general benefit of creditors of any real or personal property the assignee shall pay, in priority to the claims of the ordinary or general creditors of the assignor, the wages of all persons in the employment of the assignor at the time of the making of the assignment, or within one month before the making thereof, not exceeding three months’ wages, and such persons shall rank as ordinary or general creditors for the residue, if any, of their claims. 10 Edw. VII. c. 72, s. 3.

Priority of wages or salaries in case of assignments for benefit of creditors.

To what extent.

[As to wages in case of winding up a company see *The Ontario Companies Act, R.S.O. c. 178.*]

4. All persons who, at the time of the seizure by the sheriff or who within one month previous thereto, have been in the employment of the execution debtor, and who shall become entitled to share in the distribution of money levied out of the property of a debtor within the meaning of *The Creditors’ Relief Act* shall be entitled to be paid out of such money the wages due to them by the execution debtor, not exceeding three months’ wages, in priority to the claims of the other creditors of the execution debtor, and shall be entitled to share *pro rata* with such other creditors as to the residue, if any, of their claims. 10 Edw. VII. c. 72, s. 4.

Priority over execution creditors.

Rev. Stat. c. 81.

To what extent.

5. All persons in the employment of an absconding debtor at the time of a seizure by the sheriff under *The Absconding Debtors’ Act*, or within one month previous thereto, shall be entitled to be paid by the sheriff, out of any moneys realized out of the property of the debtor, the wages due to them by

Priority in case of attachment.
Rev. Stat. c. 82.

To what
extent.

the debtor, not exceeding three months' wages, in priority to the claims of the other creditors of the debtor, and shall be entitled to share *pro rata* with such other creditors as to the residue, if any, of their claims. 10 Edw. VII. c. 72, s. 5.

Priority in
administration
of estates.

6. In the administration of the estate of any person dying on or after the 13th day of April, 1897, any person in the employment of the deceased at the time of his death, or within one month previous thereto, who is entitled to share in the distribution of the estate, shall be entitled to his wages, not exceeding three months thereof, in priority to the claims of the ordinary or general creditors of the deceased, and such person shall be entitled to rank as an ordinary or general creditor of the deceased for the residue, if any, of his claim. 10 Edw. VII. c. 72, s. 6.

To what
extent.

Exemption
from
attachment.

7.—(1) No debt due or accruing due to a mechanic, workman, labourer, servant, clerk or employee, for or in respect of his wages, shall be liable to seizure or attachment unless such debt exceeds the sum of \$25, and then only to the extent of such excess.

Exception as
to debt for
board or
lodging.

(2) Nothing in this section shall apply to any case where the debt has been contracted for board or lodging, and, in the opinion of the judge before whom the matter is brought, the exemption of \$25 is not necessary for the support and maintenance of the debtor's family, or where the debtor is an unmarried person having no family depending on him for support, and the debt was contracted on or after the 23rd day of March, 1889. 10 Edw. VII. c. 72, s. 7.

When wages
to be payable
on distribution
of estate.

8.—(1) Wages in respect of which priority is herein conferred shall become due and be payable by the assignee, liquidator, sheriff, executor, administrator or other person charged with the duty of winding up or distributing the estate within one month from the time when the estate has been received by him or placed under his control, unless it appears to him that the estate is not of sufficient value to pay the claims or charges thereon having by law priority over the claims for wages and the ordinary expenses and disbursements of winding up and distributing the estate.

"Ordinary
Expenses,"
meaning of.

(2) Ordinary expenses shall not include the cost of litigation or other unusual expenses concerning the estate or any part thereof unless the same were incurred with the consent in writing of the person entitled to the wages or are afterwards adopted or ratified by him in writing.

Protection of
assignee, etc.,
paying claims
for wages in
good faith.

(3) Any such assignee, liquidator, sheriff, executor, administrator or other person may forthwith, upon such estate coming to his hands, pay the prior claims for wages without being chargeable in case it shall in the end appear that the

estate was insufficient to have justified such payment, provided he has acted in good faith and has reasonable grounds to believe that the estate would prove sufficient.

(4) Any number of claimants in respect of such prior ^{Joinder} claims for wages upon the same estate may join in any action, ^{of claims.} suit or other proceeding for the enforcement of their claims.
10 Edw. VII. c. 72, s. 8.

[*As to wages payable to employees of contractors for public works, see The Public and other Works Wages Act, R.S.O. c. 142.*]

CHAPTER 144.

An Act respecting Master and Servant.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

1. This Act may be cited as *The Master and Servant Act*.
10 Edw. VII. c. 73, s. 1.

LIMIT OF DURATION OF CONTRACT.

Limitation of
voluntary
contract of
service or
indentures.

2. No voluntary contract of service or indenture entered into by any persons shall be binding on them, or either of them, for a longer time than a term of nine years from the date thereof. 10 Edw. VII. c. 73, s. 2.

PROFIT-SHARING AGREEMENT.

Agreement
for share in
profits of
business.

3.—(1) An agreement entered into by a workman, servant or employee and his master or employer under which a share of the profits of any trade, calling, business or employment is to be paid to the workman, servant or employee in lieu of or in addition to salary, wages or other remuneration unless the agreement otherwise provides or a contrary intention may be reasonably inferred therefrom shall not

(a) create any relation in the nature of a partnership or the rights or liabilities of partners, or

(b) give to the workman, servant or employee the right to examine into the accounts or interfere in the management or affairs of the trade, calling or business.

Employer's
statement of
profits to be
final.

(2) Any statement or return by the employer of the net profits of the trade, calling, business or employment on which he declares and appropriates the share of profits payable under such agreement shall be final and conclusive between the parties and all persons claiming under them, and shall not be impeachable upon any ground whatever, except fraud.
10 Edw. VII. c. 73, s. 3.

COMPLAINTS FOR NON-PAYMENT OF WAGES.

Complaints by
servants
for non-pay-
ment of
wages.

4.—(1) Upon the complaint upon oath of a servant or labourer against his master or employer concerning any non-payment of wages a Justice of the Peace may summon the

master or employer to appear before him at a reasonable time to be stated in the summons, and he or some other Justice upon proof on oath of the personal service of the summons, or of its service as hereinafter authorized, shall examine into the matter of the complaint, whether or not the master or employer appears, and upon due proof of the cause of complaint the Justice may discharge the servant or labourer from the service or employment of the master or employer, and may direct the payment to him of any wages found to be due, not exceeding the sum of \$40, and the Justice shall make such order as to him seems just and reasonable for the payment of such wages, with costs, and in case of the non-payment of the same, together with the costs, for the space of eight days after the order has been made the Justice shall issue his warrant of distress for the levying of the wages, together with the costs of the order and of the distress.

(2) A complaint may be prosecuted and determined in any county or district in which the person complained against is found, or in any county or district in which the person complained against carries on business. Where complaints may be prosecuted.

(3) Proceedings may be taken under this Act within one month after the engagement or employment has ceased, or within one month after the last instalment of wages under the agreement of hiring has become due, whichever shall last happen. Time within which proceedings may be taken.

(4) Proceedings may be had for non-payment of wages in respect of service or labour performed in Ontario upon a verbal or written agreement or bargain made out of Ontario. Work done in Ontario under agreement made out of Ontario.

(5) Where the master or employer claims a set-off or makes a claim for unliquidated damages the Justice of the Peace shall investigate the same and give judgment for the balance of wages, if any, due to the claimant after deducting such set-off or claim. When master claims set-off.

(6) The Justice of the Peace shall not have jurisdiction to adjudicate upon a set-off or claim exceeding the claim for wages except to the extent of the wages. Limit of jurisdiction as to set-off.

5. Where the proceedings are taken before a Police Magistrate, and payment of wages is ordered by him to be made by the master or employer to the servant or labourer, and the same are not paid within the time limited by the order, the same proceedings may be taken by the person claiming the benefit of the order as may be taken by a party having an unsatisfied judgment or order in a Division Court for the payment of any debt, damages or costs, as respects the examination of the judgment debtor touching his estate and effects, the means he has of discharging his liability, and the disposal he has made of any property, and the Police Magistrate shall have the like power and authority to enforce payment of the debt as are possessed by a judge of a Division Court in like Additional remedy in cases before police magistrate

cases; and the practice and proceedings thereon shall be the same as nearly as may be and have the same effect as provided in *The Division Courts Act* with respect to judgment debtors. 10 Edw. VII. c. 73, s. 5.

Limit of time for payment.

6. Subject to the provisions of section 7 the Police Magistrate may name in the order for payment of wages such time, not exceeding 21 days, as to him may seem just and reasonable for the payment of the same and costs, and in case of non-payment within such time the complainant shall be entitled to take forthwith the proceedings for enforcing payment herein provided. 10 Edw. VII. c. 73, s. 6.

Jurisdiction of Police Magistrate in cities.
Rev. Stat. c. 140.

7.—(1) In the case of wages due to any mechanic, labourer or other person in respect of work of the character mentioned in section 6 of *The Mechanics' and Wage Earners' Lien Act* the jurisdiction of a Police Magistrate of a city under this Act shall extend to wages for thirty days, or for a balance equal to the wages for thirty days, though the same or the balance thereof exceed the sum of \$40.

Where no specific rate of wages agreed on.

(2) Where no specific rate of wages has been expressly agreed to between the parties the Police Magistrate of a city may order payment of the wages, reckoning the amount thereof according to the current rate of wages in the city in like cases, or according to what may appear to be a just and reasonable allowance.

Order for payment of wages; enforcing.

(3) The order shall direct payment of the wages to be made forthwith, and a warrant of distress shall be issued accordingly, unless the master makes oath, and the Police Magistrate believes, that the master is unable to make the payment forthwith, and expects to be able to pay and intends to pay the same within the time given, and unless also the Police Magistrate considers the proposed delay to be under the circumstances reasonable, and the Magistrate, if he sees fit, may order security to be given as a condition of delay.

Adjournment at instance of master.

(4) In case of an adjournment at the instance of the master the same shall be on payment for the claimant's time in attending the court, the amount to be fixed by the Police Magistrate, and such payment shall be made forthwith unless the Police Magistrate sees reason for dispensing with immediate payment.

Enforcement in Division Court.

(5) The order for payment may be filed in that Division Court which would be the proper court for bringing an action for the wages, and on such filing the order shall become a judgment of such Division Court and may be enforced as a judgment of that court. 10 Edw. VII. c. 73, s. 7.

SERVICE OF SUMMONS.

Service of summons, etc.

8.—(1) Every summons issued under this Act against an individual, firm or corporation, and every subsequent paper

or proceeding in the action or proceeding in which the summons has been issued may be served, except in the cases provided for by subsection 2, upon the person to whom it is directed either by delivering it to him personally or, if he cannot conveniently be found, by leaving the same for him at any place where such individual, firm or corporation carries on business, within the county or district in which the Justice of the Peace issuing the summons has jurisdiction, with some adult person employed in the office or place of business of such person.

(2) In cases against railway, telegraph, telephone or express companies every such summons and other papers may be served on any agent of the company whose office or place of business as such agent is within such county or district; and for the purposes of this section the word "agent" shall include—

Service on certain public companies.

- (a) in the case of a railway company, a station master having charge of a station belonging to the company;
- (b) in the case of a telegraph company, a person having charge of a telegraph office belonging to the company;
- (c) in the case of a telephone company, a person having charge of a telephone office belonging to the company; and
- (d) in the case of an express company, a person having charge of an express office belonging to the company.

(3) Service as authorized by this section shall have the same effect as personal service. 10 Edw. VII. c. 73, s. 8.

Effect of service under this section.

APPEALS.

9.—(1) An appeal from an order for the payment of wages, or order of dismissal from service or employment, or against any decision of any Justice of the Peace or Police Magistrate under this Act shall be made to the Division Court of the division in which the cause of action arose or in which the party or parties complained against, or one of them, resided at the time of the making of the complaint, or to the Division Court holden in the division in which the party or parties complained against or one of them carried on business, and in case of dismissal of the appeal, or affirmance of the order or decision, the Court appealed to shall enforce the order for payment of wages or of dismissal, and for the payment of the costs awarded, and shall, if necessary, issue process for carrying such judgment into effect.

Mode of appeal.

Time for
appealing, and
proceedings
in appeal.

(2) The appeal shall be taken within the time and in the manner provided by *The Ontario Summary Convictions Act* as to appeals to a Division Court, and the proceedings upon and incidental to the appeal and subsequent thereto shall, except as provided by subsection 1 and by section 10, be the same as in the case of an appeal under *The Ontario Summary*

Rev. Stat. c. 90. *Convictions Act*. 10 Edw. VII. c. 73, s. 9.

Trial with
or without
jury.

10.—(1) The appeal may be tried with a jury if the appellant files with the clerk of the court within ten days after the order or decision a notice requiring a jury, or if the respondent within four days after the service of the notice of appeal upon him files a notice with the clerk requiring a jury, and if the proper fees are in either case deposited with the clerk; otherwise the Judge may try the appeal without a jury or may summon a jury from the body of the court as to him seems meet.

Time and
place for
hearing
appeals.

(2) Upon the application of either party when a jury is not required the Judge may try the appeal at such time and place as he may appoint, and upon such notice as to him seems reasonable. 10 Edw. VII. c. 73, s. 10.

AGREEMENTS WAIVING ACT.

Contracts
waiving
application of
Act to be
void.

11.—(1) Every agreement or bargain, verbal or written, expressed or implied, on the part of any workman, servant, labourer, mechanic, or other person employed in any kind of manual labour intended to be dealt with in this Act whereby it is agreed that this Act shall not apply, or that the remedies hereby provided shall not be available for the benefit of any person entering into such agreement, is hereby declared to be null and void and of no effect as against any such workman, servant, labourer, mechanic, or other person.

Section
not to apply
to certain
persons.

(2) This section shall not apply to any manager, officer or foreman or to any other person whose wages are more than \$5 a day. 10 Edw. VII. c. 73, s. 11.

CHAPTER 145.

An Act respecting Councils of Conciliation and of Arbitration for settling Industrial Disputes.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Trade Disputes Act*. Short title.
10 Edw. VII. c. 74, s. 1.

2. In this Act,

Interpreta-
tion.

(a) "Employer" shall mean and include any person "Employer." or body of persons, incorporated or unincorporated, employing not less than ten workmen in the business in which the trade dispute has arisen;

(b) "Employees" shall mean and include a person or "Employees." persons in the employment of an employer.
10 Edw. VII. c. 74, s. 2.

3.—(1) A claim or dispute under this Act shall include Claims and
disputes
within the
Act. any disagreement between an employer and his employees in respect of—

- (a) the price to be paid for work done, or in course of being done, whether such disagreement shall have arisen with respect to wages, or to the hours or times of working;
- (b) damage alleged to have been done to work, delay in finishing the same, not finishing the same in a good and workmanlike manner or according to agreement;
- (c) materials supplied to employees and alleged to be bad, or unfit, or unsuitable;
- (d) the price to be paid for mining any mineral or substance mined, or obtained by mining, hewing, quarrying or other process; or the allowances, if any, to be made for bands, refuse, faults or other causes whereby the mining of the mineral substance is impeded;
- (e) the performance or non-performance of any stipulation or matter alleged to have been in an agreement, whether in writing or not;

- (f) insufficient or unwholesome food supplied to employees where there is an agreement to victual them, or to supply them with provisions or stores of any kind;
- (g) ill-ventilated or dangerous workings or places in mines, or unwholesome or insanitary rooms or other places of accommodation in which work is being performed, or want of necessary conveniences in connection with such rooms or places;
- (h) the dismissal or employment under agreement of employees; or,
- (i) the dismissal of employees for their connection with any trade or labour organization.

Minimum number of employees affected.

(2) No claim or dispute shall be the subject of conciliation or arbitration in any case in which the employees affected by such claim or dispute are fewer in number than ten. 10 Edw. VII. c. 74, s. 3.

Office of Registrar.

4.—(1) The Lieutenant-Governor in Council may appoint a Registrar of Councils of Conciliation and of Arbitration for the settlement of industrial disputes.

To whom to be at first assigned.

(2) Such office shall be assigned to some person performing other duties in the public service, unless and until the duties are so onerous as to require a separate appointment.

Duties, etc of Registrar.

(3) It shall be the duty of the Registrar to receive and register and, subject to the provisions of this Act, to deal with all applications by employers or employees for reference to a Council of Conciliation or to the Council of Arbitration of any claim or dispute within the meaning of this Act; to convene such councils for the purpose of dealing with any claim or dispute, to keep a register in which shall be entered the particulars of all references and settlements of claims and disputes made to and by a Council of Conciliation, and of all references and awards made to and by the Council of Arbitration; and generally to do all such things and take all such proceedings as may be required in the performance of his duties under this Act or the regulations made in pursuance thereof.

Registrar to summon witnesses and issue notices.

(4) The Registrar shall issue all summonses, Form 15, to witnesses to attend to give evidence, with or without the production of papers and documents, and shall issue all notices and perform all other acts in connection with the sittings of each such Council in the prescribed manner.

Registrar to proceed to locality where strike or lock-out threatened.

(5) If any difference shall arise between any employer and his employees likely to result or resulting in a strike on the part of such employees, or a lockout on the part of the employer, it shall be the duty of the Registrar, when requested in writing to do so by five or more of the employees, or by the

employer, or by the head of the municipality in which the industry is situated, to visit the place of such disturbance and diligently seek to mediate between the employer and employees.

(6) It shall be the duty of the Registrar to promote conditions favourable to a settlement by endeavouring to allay distrust, to remove causes of friction, to promote good feeling, to restore confidence, and to encourage the parties to come together and themselves effect a settlement, and also to promote agreements between employers and employees with a view to the submission of differences to conciliation or arbitration before resorting to a strike or lock-out. 10 Edw. VII. c. 74, s. 4. Duty of Registrar in adjusting disputes.

COUNCIL OF CONCILIATION.

5.—(1) A Council of Conciliation for the purpose of any dispute or claim shall consist of four conciliators, two to be nominated by each of the parties to the dispute. Councils of conciliation.

(2) The nomination shall be by writing lodged with the Registrar. Nomination of conciliators.

(3) Either party may lodge the nomination papers with the Registrar at any time after the dispute has arisen; and if the Registrar has not already received a nomination of two conciliators on behalf of the other party he shall give notice to such other party of the nomination which he has received. Filing nomination papers.

(4) Any vacancy in a Council of Conciliation arising through the death, resignation, or otherwise of any member thereof shall be filled in the same way as the appointment was first made, namely, on the nomination of the party whose conciliator has ceased to be a member of the Council. 10 Edw. VII. c. 74, s. 5. Vacancies.

PROCEDURE FOR CONCILIATION.

6. A claim or dispute within the meaning of this Act may be referred for settlement to a Council of Conciliation where— Reference to council of conciliation.

(a) the parties to the claim or dispute jointly agree in the prescribed manner, Form 2, to refer such claim or dispute for settlement to a Council of Conciliation, or, Agreement to refer.

(b) either party to the claim or dispute, in the prescribed manner, lodges an application, Form 3, with the Registrar requesting that the claim or dispute be referred for settlement to a Council of Conciliation. 10 Edw. VII. c. 74, s. 6. Application for reference.

7. The Registrar, on receipt of any such agreement or application for a reference to a Council of Conciliation, shall forthwith lay the same before the Council; and, subject to the Duties of Registrar on application for reference.

provisions of this Act and the regulations, shall carry out all directions of the said Council given in the endeavour of the Council to effect a settlement of the claim or dispute. 10 Edw. VII. c. 74, s. 7.

Representatives before council of conciliation.

8. Either party to the claim or dispute may, for the purposes of this Act, be represented by one or more persons, not exceeding three, authorized by such party as managers in that behalf; and such party shall be bound by the acts of such managers. 10 Edw. VII. c. 74, s. 8.

When managers must have written authority.

9. Where the party numbers fewer than twenty the managers must be authorized in writing, Form 4, signed by the members of the party to act for and on their behalf. 10 Edw. VII. c. 74, s. 9.

Election of managers as representatives.

10.—(1) Where the party numbers twenty or more the managers may be appointed or elected in such manner as the members of the party think proper.

Record of election.

(2) A copy of the resolution electing the managers, together with a declaration by the chairman or president of the meeting stating it to have been carried, shall be kept as a record of the election. 10 Edw. VII. c. 74, s. 10.

Written statement of case.

11.—(1) The parties to the claim or dispute shall, if possible, agree to a joint written statement of their case; but if they do not so agree a statement in writing from each party shall be made.

To be forwarded to Registrar.

(2) The statement or statements shall be forwarded to the Registrar before the meeting of the Council. 10 Edw. VII. c. 74, s. 11.

Convening meeting of conciliators.

12. When the parties to a claim or dispute have named their conciliators the Registrar shall by notice in writing, Form 5, convene a meeting of the conciliators at a time and place mentioned in the notice, the same being selected with due regard to the general convenience of the conciliators and the parties. 10 Edw. VII. c. 74, s. 12.

Report of council.

13.—(1) The Council shall transmit to the Registrar a report, Forms 6 and 7, setting forth the result of the reference.

When council report their failure to bring about settlement.

(2) In case such report is to the effect that the Council has failed to bring about any settlement or adjustment of the claim or dispute the Registrar, on the receipt of the report, shall transmit a certified copy to each party to the claim or dispute; whereupon either party may, by notice in writing, Forms 8 and 9, require the Registrar to refer the claim or dispute to the Council of Arbitration for settlement, Form 10. 10 Edw. VII. c. 74, s. 13.

THE COUNCILS OF ARBITRATION.

14.—(1) There shall be two Councils of Arbitration, Establishment of council of arbitration.

(a) A Council of Arbitration for the settlement by award in respect of claims and disputes between railway companies, including street railway companies, and wage earners employed in respect of railway construction or traffic on railways; and

(b) A Council of Arbitration in respect of other claims and disputes.

(2) Each Council shall consist of three members, one to be appointed by the Lieutenant-Governor on the recommendation of the employees, and one to be appointed by him on the recommendation of the employer. Each council to consist of three members.

(3) The third member of each Council shall be the president of the Council and shall be appointed in manner following, namely: The two members appointed shall within twenty-one days after their appointment submit, Form 1, to the Lieutenant-Governor the name of some impartial person to be appointed by him to the position of President. Appointment of president by agreement.

(4) In case of the said two members failing so to do the Lieutenant-Governor may appoint as President an impartial person not personally connected with or interested in any trade or industry, or in the judgment of the Lieutenant-Governor likely, by reason of his former occupation, business vocation or other influence, to be biased in favour of or against employers or employees. Appointment of president on failure to agree.

(5) The same person may be President of both Councils. One for both.

(6) As soon as practicable after a full Council has been appointed by the Lieutenant-Governor notice of the appointment and the names of the members of the Council shall be published by the Registrar in the *Ontario Gazette*. Council to be gazetted.

(7) The Lieutenant-Governor may cancel the appointment of any member on the recommendation of the authority by which his appointment was recommended. Cancellation of appointment.

(8) The term of office of a member shall be two years; and at the end of every term of two years a fresh appointment of members shall be made in manner aforesaid. Term of office.

(9) Every member after the expiry or other termination of his term of office shall be eligible for reappointment for a like term. Members eligible for re-appointment.

(10) If the President of a Council shall be declared a bankrupt or insolvent, or shall make a composition with his creditors, or shall make an assignment of his property or salary for the benefit of his creditors, or if any member of either Council shall be convicted of any criminal offence, such When president or members to forfeit office.

President or member respectively shall thereby vacate his office of member.

Vacancies,
disabilities,
etc.

(11) Any vacancy in a Council arising from death, resignation or other cause shall be filled by the Lieutenant-Governor for the term of office, or the residue of such term, as the case may be, in accordance with the respective methods prescribed by this Act.

Temporary
appointment
of president.

(12) In case the President of a Council is unable to act as such from illness, absence from the Province, or other temporary cause the Lieutenant-Governor may appoint a person to be acting President of the Council in his place; and such acting President shall have all the powers and perform all the duties conferred by this Act upon the President.

Illness or
disability of
member of
council while
reference
pending.

(13) If any member of a Council, other than the President, is, from illness or from any other disability howsoever arising, unable to perform the duties of his office in respect to any claim or dispute then pending the parties thereto may consent, in writing under their respective hands, to the appointment by the Lieutenant-Governor of a member named in such writing to act for and in the place of the member during such disability; and if either of the parties refuse such consent the Judge of the County or District Court of the county or district in which the matter is situate with respect to which the claim or dispute has arisen may, on notice to the parties of the application to him, make the nomination; and the Lieutenant-Governor may appoint the person so nominated, who shall thereupon be deemed a member of such Council for all the purposes relating to such claim or dispute and to the hearing and determination thereof.

Members of
council of
conciliation
may sit as
assessors.

Proviso.

(14) Where a dispute has been referred to either Council of Arbitration the members of the Council of Conciliation may, with the consent in writing, Form 13, of both parties to the claim or dispute, sit as assessors upon the reference to the Council of Arbitration; but no such assessor shall take any part in the reference except as an assessor sitting to inform the Council of Arbitration when called upon to do so.

Remuneration
of members
of councils.

(15) The members of each Council of Arbitration shall be remunerated for their services in such manner and according to such rate of payment as the Lieutenant-Governor in Council shall appoint, but subject to legislative provision being made therefor. 10 Edw. VII. c. 74, s. 14.

Mode of
appointing
arbitrators
by employers
and employees.

15. The following may be the method of ascertaining the recommendation of employer and employees as to the persons to be appointed on their recommendation respectively as members of the Council of Arbitration:

Qualification
of voters in
the interest
of employers.

(a) For the person to be recommended by the employer every employer in Ontario shall be entitled to one vote; every organization in Ontario, whether incorporated or unincorporated, representing the inter-

ests of employers, each member of which has at least ten persons in his employment, shall be entitled to one vote;

- (b) Every Board of Trade in Ontario legally constituted shall be entitled to one vote for a representative of the employer in each Council; Boards of Trade in Ontario.
- (c) For the person to be recommended by employees as a member of the Council in matters not relating to railway companies, every trades and labour council, every district assembly of the Knights of Labour, every federated council of building trades, every lawfully incorporated trades union, every organization of wage-earners of an industrial calling primarily constituted for, and actually and *bona fide* operated for the regulation of the wages and hours of labour as between employers and employed, shall be entitled to one vote; but this shall not be deemed to include co-operative associations or societies formed under Chapter 202 of the Revised Statutes of Ontario, 1897; Who may vote for person to be recommended in the interest of employees.
- (d) For choosing the person to be recommended by employees of railway companies as a member of the Council in matters relating to railways, every organization in Ontario, whether incorporated or unincorporated, exclusively representing the interest of wage-earners employed in respect of railway construction or traffic on railways shall be entitled to one vote; but this shall not be deemed to include co-operative associations or societies; Who may vote for person to be recommended in the interest of railway employees.
- (e) The Registrar shall give notice in the *Ontario Gazette* calling on all organizations and persons entitled to vote for a member to be recommended to either Council, or claiming to be so entitled, to communicate with him on or before the 1st day of August, of every second year reckoned from 1910; and such notice shall be inserted for at least four weeks before that day in every such year; Notice to representative interests.
- (f) The Registrar shall forthwith, after such first day of August, prepare a list of the persons and organizations appearing to be entitled to vote for a person to be recommended for appointment to each of the said Councils respectively, and may refer any doubtful claim to the Minister of Public Works for his advice or direction; Lists to be prepared.
- (g) Each list so to be prepared shall give the last known post office address of every person and organization entitled to vote as employers and employees respectively for the said Councils respectively, and shall be published in the *Ontario Gazette*, and shall be open to inspection at any time by any person Contents of lists.

Inspection.

without fee, in the office of the Registrar during office hours;

Voting papers to be transmitted to persons entitled to vote.

(h) Between the 1st and 30th days of September of every second year reckoned from 1910 the Registrar shall transmit by registered post to the address of each person and organization entitled to vote a voting paper, Form 16.

Signing voting papers.

(i) The voting paper of any person entitled to vote under this Act as an employer shall be signed by himself or some person duly authorized in writing in that behalf, and the voting paper of any organization entitled to vote shall be signed by the president or vice-president of the organization, or, in the absence of such president or vice-president, by any office bearer of the organization other than the secretary thereof, and shall be countersigned by the secretary or acting secretary, or, in the absence of such secretary or acting secretary, by any two members not being office bearers; and the voting papers of a Board of Trade shall be under the corporate seal of the Board;

Addressing voting papers.

(j) The voting paper shall be forwarded in a stamped envelope, addressed to the Registrar of Councils of Conciliation and Arbitration, Toronto, and endorsed, "Voting paper under *The Trade Disputes Act*;"

When voting papers to be mailed.

(k) Every voting paper shall be forwarded by mail or otherwise to the Registrar so as to be received by him on or before the 15th day of October of the year in which the voting is to be held, and any voting paper received by the Registrar after the said date shall have no effect or validity;

Voting papers not received in time.

Count of votes and report to be published.

(l) The Registrar shall forthwith, after the said 15th day of October, count the recommendations as well by or on behalf of employees, as by or on behalf of employers for each Council, and shall forward the same to the Minister of Public Works, together with the Registrar's report thereon; and the Minister of Public Works, upon being satisfied of the accuracy of such report, shall publish in the *Ontario Gazette* the result of such recommendations, and the names of the persons appointed by the Lieutenant-Governor upon such recommendations to be members of the Councils of Arbitration; and also the names of, and number of votes given for the five persons who have received the greater number of votes for each Council on behalf of employers and employees respectively;

- (m) In case either employers or employees, or both, fail to recommend any person to represent them on either or both the Councils, as provided for in this section, the Lieutenant-Governor in Council may appoint a person or persons to fill the vacancy or vacancies. 10 Edw. VII. c. 74, s. 15.
- Where parties fail to recommend member of council of arbitration.

PROCEDURE FOR ARBITRATION.

16.—(1) Any dispute or claim within the meaning of this Act may be referred to the appropriate Council of Arbitration for its hearing and determination in any of the following cases:—

Reference to arbitration, how made, etc.

- (a) On application, Form 9, to the Registrar by either party to a claim or dispute which, having been referred to a Council of Conciliation, has not been settled or adjusted by such Council;
- (b) On application, Form 8, to the Registrar by both parties to a claim or dispute, which has not been so referred to a Council of Conciliation.

Provided that if in either case the award of the Council of Arbitration is not complied with or carried out by the parties, or for any reason proves abortive, the parties to the reference, or either of them, shall not thereby be precluded from referring the dispute to a Council of Conciliation or from making a second reference to the Council of Conciliation where a former reference has already been made to it.

Proviso.

(2) If in case of a claim or dispute, within the meaning of this Act, one party has lodged an application with the Registrar requesting that the dispute or claim be referred to a Council of Conciliation, and appointing two conciliators for the purpose, and notice of the application and of the appointment of conciliators has been duly given to the other party, and such other party has not within a reasonable period appointed conciliators, and the party lodging the application has not proceeded to a strike or lock-out, as the case may be, the Council of Arbitration, if it thinks fit, may proceed as in case of an abortive reference to a Council of Conciliation, and such Council may report their decision as to the proper settlement of the dispute in question and also in case the Council thinks proper, a concise statement as to the origin of the dispute, and the causes inducing the same, and what parties, if any, are in the opinion of the Council mainly responsible for the same.

Where attempt to take conciliation proceedings has failed.

(3) The mayor of any city or town, upon being notified that a strike or lock-out is threatened or has actually occurred within the municipality, shall at once notify the Registrar thereof by writing, stating the name of the employer, the nature of the dispute, and the number of employees involved as far as his information will enable him so to do.

Mayors to notify Registrar of strike or lock-out.

Duty of
councils of
arbitration
on being
notified of
strike or
lock-out.

(4) It shall be the duty of each of the Councils of Arbitration, upon being notified, or on being otherwise made aware, that a strike or a lock-out has occurred or is threatened, to place itself, as soon as practicable, in communication with the parties concerned and to endeavor by mediation to effect an amicable settlement, and if in the judgment of the Council it is deemed best to enquire into the cause or causes of the controversy it shall proceed as in the case of a reference. 10 Edw. VII. c. 74, s. 16.

Provisions as
to parties and
representa-
tives.

17. In every case referred to a Council of Arbitration, or in which the Council has determined to act under the preceding section of this Act, the Council shall have power to require either or each party to the claim or dispute to name not more than three persons, who, upon their consent in writing, Form 14, shall for all purposes of the reference be taken to represent such party. 10 Edw. VII. c. 74, s. 17.

Conduct of
proceedings of
council of
arbitration.

18.—(1) The Council shall sit and conduct its proceedings as in open court, and in making its decision shall be governed by the principles of equity and good conscience.

Powers of
President.

(2) The President shall, for the purpose of preserving order during any sitting of the Council, have all the powers of a Judge of the Supreme Court, except the power of committing for contempt. 10 Edw. VII. c. 74, s. 18.

Quorum of
council of
arbitration.

19. Any two members of the Council of Arbitration shall constitute a quorum for the transaction of business, and may hold meetings at any time and at any place within Ontario. 10 Edw. VII. c. 74, s. 19.

Investigation
of disputes by
one member
of board.

20. The Council of Arbitration may order that an examination or investigation shall be held before any one member of the Council, but such member shall report upon such examination or investigation to the Council, and the decision of such member shall not be considered binding until approved by the Council or a majority thereof. 10 Edw. VII. c. 74, s. 20.

Award, how
to be made.

21.—(1) The report or award, Form 11, of the Council of Arbitration shall be made within one month after the Council has completed its sittings for the hearing of the reference, and shall be by and under the hands of a majority of the members of the Council.

Publication
in Gazette.

(2) At the request of either party, and if the Council approves, a copy of the report or award shall be published by the Registrar in *The Ontario Gazette*.

Deposit with
Registrar.

(3) The report or award, or a copy certified under the hand of the President of the Council, shall be deposited in the office of the Registrar and shall be open to inspection without charge during office hours. 10 Edw. VII. c. 74, s. 21.

Inspection.

22.—(1) Either party to a reference to either Council of Arbitration, at any time before award made, may by writing under the hands of such party, Form 12, agree to be bound by the award of the Council upon the reference in the same manner as parties are bound upon an award made pursuant to an ordinary submission in writing to arbitration under *The Arbitration Act*. Agreement to be bound by award.

Rev. Stat. c. 65.

(2) Every such agreement made by one party shall be communicated by the Registrar to the other party, and if such other party also agrees in like manner to be bound then the award may, on the application of either party, be enforced in the same manner as an award on an ordinary submission in writing to arbitration may be enforced under the said Act. 10 Edw. VII. c. 74, s. 22. Award may be enforced by legal proceedings if so agreed.

MISCELLANEOUS PROVISIONS.

23. The Councils of Conciliation and Arbitration shall have power— Powers of councils.

- (a) to visit the locality where the trade dispute has arisen and to hear all persons interested who may come before them; To visit locality.
- (b) to summon, Form 15, any person to attend as a witness before the Council, and in the case of any person so summoned refusing to attend after payment or tender of his proper fees application may be made in a summary way to a Justice of the Peace having jurisdiction in the city, town or county wherein the council may be sitting for an order compelling such attendance; and such Justice of the Peace may make such order as might be made in any case wherein such Justice has power to compel appearance before him in pursuance of *The Ontario Summary Convictions Act*, and Enforcing attendance of witnesses.
- (c) to administer an oath to any person attending as a witness before the Council and to examine any such person on oath or affirmation. 10 Edw. VII. c. 74, s. 23. Taking evidence on oath.

Rev. Stat. c. 90.

24. No party to any proceeding either before a Council of Conciliation or a Council of Arbitration shall be represented by counsel or solicitor or by any paid agent other than one or more of the persons between whom the claim or dispute has arisen. 10 Edw. VII. c. 74, s. 24. Professional assistance not permitted.

25. No fees shall be paid to the Registrar by any party in respect of any proceeding under this Act. 10 Edw. VII. c. 74, s. 25. Registrar not to receive fees.

Remuneration
of members
of council of
conciliation.

26. Every member of a Council of Conciliation, while engaged in adjustment of any dispute, shall be remunerated for his services as follows:—

Preliminary meetings	\$3
Wholeday sittings	\$4
Half-day sittings	\$2

out of any funds which may be appropriated by this Legislature for that purpose. 10 Edw. VII. c. 74, s. 26.

Witnesses'
fees.

27. Witnesses shall be entitled to the same fees as in a Division Court. 10 Edw. VII. c. 74, s. 27.

Regulations.

28.—(1) The Lieutenant-Governor may make regulations for the purpose of giving effect to any of the provisions or requirements of this Act, and all such regulations not being inconsistent with this Act shall have the full effect of law on publication in the *Ontario Gazette*.

To be laid
before
Assembly.

(2) Such regulations shall be laid before the Assembly within fourteen days after being published in the *Ontario Gazette* if the Legislature is in session, and if it is not in session then within the first fifteen days of the ensuing session. 10 Edw. VII. c. 74, s. 28.

Informalities
not to invali-
date proceed-
ings.

29. No proceeding under this Act shall be deemed invalid by reason of any defect of form, or any technical irregularity. 10 Edw. VII. c. 74, s. 29.

FORM 1.

(Section 14.)

RECOMMENDATION AS TO PRESIDENT OF THE COUNCIL OF ARBITRATION.

We, the undersigned arbitrators, appointed under the provisions of *The Trade Disputes Act*, submit the name of _____ of _____ as that of an impartial person qualified for the position of President of the Council of Arbitration as respects railway disputes (or as respects disputes other than railway disputes).

Dated this _____

day of _____

10 Edw. VII. c. 74, Form 1.

FORM 2.

(Section 6.)

AGREEMENT OF BOTH PARTIES TO REFER TO CONCILIATION.

(To be prepared in duplicate.)

Memorandum of agreement made this _____ day of _____, between _____, employers, and _____ employees.

Whereas a claim or dispute in respect of matters hereinafter stated has arisen between the parties hereto, they do hereby refer the said claim or dispute for settlement to a council of conciliation, and we, the undersigned, as managers for the said employers, do hereby name and declare _____ and _____ to be conciliators for such employers; and we, the undersigned, as managers for the employees, do hereby name _____ and _____ to be the conciliators for such employees upon such council as aforesaid.

The claim or dispute is as follows (*here state the matter or matters in dispute*).

Now, we, the parties hereto, do hereby request the Registrar to have the said claim or dispute referred to a council of conciliation consisting of the aforesaid persons.

(To be signed by the)

Managers for the Employers.

Managers for the Employees.

Witness:

(Appointment of Managers to be attached.)

See Form 4.

10 Edw. VII. c. 74, Form 2.

FORM 3.

(Section 6.)

APPLICATION BY ONE PARTY TO REFER TO CONCILIATION.

(Date.)

Whereas a claim or dispute has arisen between employers and employees; we, the undersigned managers for and on behalf of the aforesaid, apply to have the said claim or dispute referred to a council of conciliation, and hereby name and declare of such council as aforesaid. of to be our conciliators upon

The dispute or claim is as follows (here state the matter or matters in dispute.)

Managers for

(Appointment of Managers to be attached.)

See Form 4.

10 Edw. VII. c. 74, Form 3.

FORM 4.

(Section 9.)

AUTHORITY TO MANAGERS TO ACT.

We, the undersigned employers (*or* employees), one of the parties to the claim or dispute between _____ and _____ authorize _____ of _____ of _____ to represent us, as managers before the council of conciliation, and we hereby agree to be bound by the acts of these our representatives.

Dated this _____ day of _____, 19____

(Where the appointment is made by employees it should be signed by not fewer than ten of such employees.)

Witness:

10 Edw. VII. c. 74, Form 4.

FORM 5.

(Section 12.)

CONVENING A MEETING OF CONCILIATORS.

(Date.)

I beg to inform you that you have been selected as a conciliator to deal with a certain dispute or claim between _____ employers and _____, employees.

You are requested to attend a meeting of the conciliators in the above matter, to be held on the _____ day of _____ at _____, in the _____, when the application in the said matter will be laid before you.

I have the honor to be
Your obedient servant,
A.B., Registrar

10 Edw. VII. c. 74, Form 5.

FORM 6.

(Section 13.)

TERMS OF SETTLEMENT OF ADJUSTMENT AFTER REFERENCE TO COUNCIL
OF CONCILIATION.

Memorandum of settlement made this _____ day of _____, between _____, employees, and _____, employers, and _____ employees.

Whereas a claim or dispute having arisen between _____ employers and _____, employees, _____ were appointed conciliators, and the undersigned, _____, were appointed

managers for the said _____, and the undersigned, _____ were appointed managers for the said _____, it is hereby declared that a settlement or adjustment of the said claim or dispute has been arrived at in the following terms, to which terms the said managers hereby agree for and on behalf of the said parties respectively:

(Set forth terms of settlement.)

In witness whereof we, the undersigned, have hereunto set our hands.

A.B., C.D., Managers for Employers.

E.F., G.H., Managers for Employees.

I., J., K., Conciliators.

10 Edw. VII. c. 74, Form '3.

FORM 7.

(Section 13.)

REPORT BY CONCILIATORS OF FAILURE TO SETTLE.

(Date.)

To the Registrar.

Whereas a certain claim or dispute was referred to us for conciliation by _____, employers and _____ employees, and such conciliation was duly entered upon, the parties aforesaid being duly represented by their respective managers and evidence was taken (*omit the latter words if such was not the case*), and the claim or dispute referred to us was fully discussed, but no settlement or adjustment was arrived at. Now, we, the conciliators hereinafter subscribed, report that we have been unable to bring about any settlement or adjustment of the claim or dispute so referred, satisfactory to the parties thereto.

A. B., C. D., Conciliators.

10 Edw. VII. c. 74, Form 7.

FORM 8.

(Sections 13, 16.)

JOINT APPLICATION TO REFER TO THE COUNCIL OF ARBITRATION.

(Date.)

To the Registrar under *The Trade Disputes Act*.

Whereas a claim or dispute in respect of matters hereinafter stated has arisen between _____, employer, and _____, employees.

We, the undersigned, _____ managers for the said employers, and we, the undersigned, _____, managers for the said employees, duly appointed to represent the interests of the said parties respectively, hereby apply to have the said claim or dispute referred to the council of arbitration.

The claim or dispute is as follows:

(Here state the matter in dispute.)

Managers for Employers._____
Managers for Employees.

(Appointment of Managers to be attached.)

See Form 4.

10 Edw. VII. c. 74, Form 8.

FORM 9.

(Sections 13, 16.)

APPLICATION BY ONE PARTY TO REFER TO THE COUNCIL OF ARBITRATION AFTER FAILURE OF COUNCIL OF CONCILIATION.

(Date.)

To the Registrar under *The Trade Disputes Act*.

Whereas a claim or dispute having arisen between _____, employers, and _____, employees, was referred to a council of conciliation, and the said council failed to settle or adjust the same; now, therefore, we, the undersigned, being the managers duly appointed to represent _____, one of the parties to the said reference, do hereby require you to refer the said claim or dispute to the council of arbitration.

Managers.

10 Edw. VII. c. 74, Form 9.

FORM 10.

(Section 13.)

REFERENCE TO COUNCIL OF ARBITRATION AFTER FAILURE OF COUNCIL
OF CONCILIATION.

(Date.)

To the President of the Council of Arbitration as respects railway disputes (or as respects disputes other than railway disputes).

Whereas a certain claim or dispute having arisen between and , the same was referred for conciliation to and they have reported that they have been unable to bring about any settlement or adjustment of the said claim or dispute satisfactory to the parties thereto, and whereas , one of the parties to the claim or dispute requires such claim or dispute to be referred to the council of arbitration. Now, therefore, I do so refer the said claim or dispute to the said council, and herewith transmit all the papers in the said reference to you as president of the said council.

Registrar.

10 Edw. VII. c. 74, Form 10.

FORM 11.

(Section 21.)

AWARD.

We, , President, and , Arbitrators as respects railway disputes (or as respects disputes other than railway disputes) (or a majority of the council of arbitration), in the claim or dispute between , employers, and employees, do hereby award that (here set forth the award).

Given under our hands this day of , A.D. 19

(President.)

(Arbitrators.)

Witness:

(Registrar.)

10 Edw. VII. c. 74, Form 11.

FORM 14.

(Section 17.)

CONSENT OF MANAGERS TO ACT BEFORE THE COUNCIL OF ARBITRATION.

(Date.)

To the Registrar.

Whereas the council of arbitration has required one of the parties to a claim or dispute between and , referred to the said Council for award, to name not more than three persons, who, upon their consent in writing, shall for all purposes of the above reference be taken to represent such persons, now we, the undersigned, having been duly named as such persons, do hereby consent to represent the said party for all the purposes of the hereinafore mentioned reference, and in witness of such consent hereunto set our hands.

(Signed)

Witness:

10 Edw. VII. c. 74, Form 14.

FORM 15.

(Section 23.)

SUMMONS TO WITNESSES BEFORE EITHER COUNCIL.

To

Whereas a council of conciliation (or the council of arbitration as respects railway disputes) (or as respects disputes other than railway disputes) constituted under *The Trade Disputes Act* has now before it for conciliation (or arbitration, as the case may be), a claim or dispute between employers, and

, employees; and whereas the said council desire that you should attend before the said witness to give evidence, and have authorized and required me as registrar, to issue this summons for your attendance. I do hereby, in exercise of the powers in this behalf given by the said Act, summon and require you to attend at , on , the day of , at the hour of , in the . noon of the said day, at before the said council, there to be examined and give evidence as to and concerning the said claim or dispute, and so to attend from day to day thereafter until you have been duly discharged by the said council from further attendance.

[And I further require you to bring with you and produce at the time and place aforesaid (documents, etc., if any, required to be produced by witness.)]

In default of your attending at the time and place aforesaid, you are liable to be proceeded against under the provisions of *The Trade Disputes Act*.

In witness whereof, I, the said , as such Registrar as aforesaid, have hereunto set my hand this day of , 19 .

A.B.,

Registrar.

NOTE.—The witness is entitled to the same witness fees as in a Division Court.

10 Edw. VII. c. 74, Form 15.

FORM 16.

*(Section 15.)*VOTING PAPER OF *(naming the person or organization)*.

A.B. *(person recommended)* is hereby recommended to be appointed a member of the council of arbitration for disputes between railway companies and their employees (or in matters not relating to railway disputes) under *The Trade Disputes Act*, on behalf of the employer *(or employees, as the case may be)*.

(Signed.)

10 Edw. VII. c. 74, Form 16.

CHAPTER 146.

An Act to secure Compensation to Workmen in
Certain Cases.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PRELIMINARY.

1. This Act may be cited as *The Workmen's Compensation for Injuries Act*. R.S.O. 1897, c. 160, s. 1. Short title.

2. In this Act,

- | | |
|--|--|
| <p>(a) "Action," "proceeding" or "suit" shall include arbitration;</p> <p>(b) "County" shall include district;</p> <p>(c) "County Court" shall include district court;</p> <p>(d) "Court" or "Judge" shall include arbitrator;</p> <p>(e) "Defendant" shall include respondent; 62 Vict. (2), c. 18, s. 2, <i>part</i>.</p> <p>(f) "Employer" shall include a body of persons corporate or unincorporate, and also the legal personal representatives of a deceased employer, and the person liable to pay compensation under section 4;</p> <p>(g) "Packing" shall mean a packing of wood or metal, or some other equally substantial and solid material, of not less than two inches in thickness, and which, where filled in, shall extend to within one and a half inches of the crown of the rails in use on any railway, shall be neatly fitted so as to come against the web of such rails and shall be well and solidly fastened to the ties on which such rails are laid; R.S.O. 1897, c. 160, s. 2, <i>part</i>.</p> <p>(h) "Plaintiff" shall include claimant; 62 Vict. (2), c. 18, s. 2, <i>part</i>.</p> <p>(i) "Railway servant" shall mean and include a railway servant, tramway servant and street railway servant;</p> | <p>Interpretation,
"Action."</p> <p>"County."</p> <p>"County court."</p> <p>"Court,"
"Judge."</p> <p>"Defendant."</p> <p>"Employer."</p> <p>"Packing."</p> <p>"Plaintiff."</p> <p>"Railway servant."</p> |
|--|--|

"Superintendence."

- (j) "Superintendence" shall mean such general superintendence over workmen as is exercised by a foreman, or person in a like position to a foreman, whether the person exercising superintendence is or is not ordinarily engaged in manual labour;

"Workman."

- (k) "Workman" shall not include a domestic or menial servant or servant in husbandry, gardening or fruit growing, where the personal injury caused to any such servant has been occasioned by or has arisen from or in the usual course of his work or employment as a domestic or menial servant, or as a servant in husbandry, gardening or fruit-growing, but shall mean any railway servant and any person before mentioned who, being a labourer, servant, journeyman, artificer, handicraftsman, miner or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract is made before or after the passing of this Act, is expressed or implied, oral or in writing, and is a contract of service or a contract personally to execute any work or labour. R.S.O. 1897, c. 160, s. 2, *part*.

PART I.—RIGHT OF ACTION FOR COMPENSATION.

When workmen to have claim against employer.

3. Where personal injury is caused to a workman by reason of—

- (a) any defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of the employer; or
- (b) the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence; or
- (c) the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where such injury resulted from his having so conformed; or
- (d) the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by the employer or by any person delegated with the authority of the employer in that behalf; or

- (e) the negligence of any person in the service of the employer who has the charge or control of any points, signal, locomotive, engine, machine, or train upon a railway, tramway or street railway,

the workman, or, in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work. R.S.O. 1897, c. 160, s. 3.

4.—(1) Where the execution of any work is being carried Employer, who to be deemed. in effect under any contract, and

- (a) the person for whom the work, or any part thereof, is done, owns or supplies any ways, works, machinery, plant, buildings, or premises used for the purpose of executing the work, and
- (b) by reason of any defect in the condition or arrangement of such ways, works, machinery, plant, buildings or premises, personal injury is caused to any workman employed by the contractor or by any sub-contractor, and
- (c) the defect or the failure to discover or remedy the defect arose from the negligence of the person for whom the work or any part thereof is done, or of some person being in his service and entrusted by him with the duty of seeing that such condition or arrangement is proper,

the person for whom the work, or that part of the work is done shall be liable to pay compensation for the injury as if the workman had been employed by him, and for that purpose shall be deemed to be the employer of the workman within the meaning of this Act; but any such contractor or sub-contractor shall be liable to pay compensation for the injury as if this section had not been enacted, so however that double compensation shall not be recoverable for the same injury.

(2) Nothing in this section shall affect any rights or Rights of other parties. liabilities of the person for whom the work is done and the contractor and sub-contractor, if any, as between themselves. R.S.O. 1897, c. 160, s. 4.

5. Where personal injury is caused to a workman em- Injuries by railways. ployed on or about any railway.

- (a) by reason of the lower beams or members of the superstructure of any highway, or other overhead bridge, or any other erection or structure

over such railway, not being of a sufficient height from the surface of the rails to admit of an open and clear headway of at least seven feet between the top of the highest freight cars then running on such railway, and the bottom of such lower beams or members, or

(b) by reason of the space between the rails in any railway frog, extending from the point of such frog backward to where the heads of such rails are not less than five inches apart, not being filled in with packing, or

(c) by reason of the space between any wing-rail and any railway frog, and between any guard-rail and any other rail fixed and used alongside thereof as aforesaid, and between all wing-rails where no other rail intervenes (save only where the space between the heads of any such wing-rail and railway frog as aforesaid, or between the heads of any such guard-rail and any other rail fixed and used alongside thereof as aforesaid, or between the heads of any such wing-rails where no other rail intervenes as aforesaid, is either less than one and three-quarters of an inch or more than five inches in width) not being at all times during every month of April, May, June, July, August, September, October, and November filled in with packing,

such injury shall be deemed to have been caused by reason of a defect within the meaning of clause (a) of section 3, but nothing in this section shall be taken or construed, as in any respect, or for any purpose restricting the meaning of the said clause. R.S.O. 1897, c. 160, s. 5.

Exceptions
to preceding
provisions.

6. A workman, or his legal representatives, or any person entitled in case of his death, shall not be entitled under this Act to any right of compensation or remedy against the employer,

(a) under clause (a) of section 3, unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person entrusted by him with the duty of seeing that the condition or arrangement of the ways, works, machinery, plant, building or premises are proper,

(b) under clause (d) of section 3, unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned, but where a rule or by-law has been approved, or has been accepted as a proper rule or by-law, either by the Lieutenant-Governor in Council, or

under and pursuant to any provision in that behalf of any Act of this Legislature, or of the Parliament of Canada, it shall not be deemed for the purposes of this Act to be an improper or defective rule or by-law,

- (c) where the workman knew of the defect or negligence which caused his injury, and failed without reasonable excuse to give or cause to be given within a reasonable time, information thereof to the employer or some person superior to himself in the service of his employer, unless he was aware that the employer or such superior already knew of the defect or negligence,

but such workman shall not, by reason only of his continuing in the employment of the employer with knowledge of the defect, negligence, act, or omission, which caused his injury, be deemed to have voluntarily incurred the risk of the injury. R.S.O. 1897, c. 160, s. 6.

7. The amount of compensation recoverable under this Act shall not exceed either such sum as may be found to be ^{Limit of amount of compensation.} equivalent to the estimated earnings, during the three years preceding the injury of a person in the same grade employed during those years in the like employment in Ontario, or the sum of \$1,500, whichever is larger; and such compensation shall not be subject to any deduction or abatement, by reason, or on account, or in respect of any matter or thing whatsoever, save such as is specially provided for in section 12. R.S.O. 1897, c. 160, s. 7.

8. Where in any action under this Act compensation is ^{Distribution of compensation.} awarded in the case of the death of a workman for an injury sustained by him in the course of his employment, the amount recovered, after deducting the costs not recovered from the defendant may, if the Court or Judge before whom the action is tried so directs, be divided between the wife, or husband, parent and child of the deceased in such shares as the Court or Judge, with or without assessors, as the case may be, or if the action is tried by a jury, as the jury may determine. R.S.O. 1897, c. 160, s. 8.

9. Subject to the provisions of sections 13 and 14, an ^{Limit of time for recovery of compensation.} action for the recovery, under this Act, of compensation for an injury shall not be maintainable against the employer of the workman, unless notice that injury has been sustained is given within twelve weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or in case of death within twelve months from the time of death; but in case of death the want of such notice shall be no bar to the maintenance of such action, if the Court or Judge is of opinion that there was

reasonable excuse for such want of notice. R.S.O. 1897, c. 160, s. 9.

Contract by workman when to constitute a defence to action for compensation.

10. No contract or agreement made or entered into by a workman shall be a bar or constitute any defence to an action for the recovery under this Act of compensation for any injury,

(a) unless for such workman entering into or making such contract or agreement there was other consideration than that of his being taken into or continued in the employment of the defendant, nor

(b) unless such other consideration was, in the opinion of the Court or Judge before whom such action is tried, ample and adequate, nor

(c) unless, in the opinion of the Court or Judge, such contract or agreement, in view of such other consideration was not on the part of the workman improvident, but was just and reasonable,

and the burden of proof in respect of such other consideration, and of the same being ample and adequate, and that the contract was just and reasonable and was not improvident, shall, in all cases, rest upon the defendant; but notwithstanding anything in this section, no contract or agreement made or entered into by a workman shall be a bar or constitute any defence to an action for the recovery under this Act of compensation for any injury happening or caused by reason of any of the matters mentioned in section 5. R.S.O. 1897, c. 160, s. 10.

Proviso.

Liability of employer's representatives.

11. Notwithstanding anything in this Act, an action under sections 3, 4 or 5 shall lie against the legal personal representatives of a deceased employer. R.S.O. 1897, c. 160, s. 11.

Deductions from compensation.

12. There shall be deducted from any compensation awarded to any workman or the representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or damages, or part of a penalty or damages which may in pursuance of any other Act, either of the Parliament of Canada, or of this Legislature, have been paid to such workman, representatives or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or damages, or part of a penalty or damages under any such Act, either of the Parliament of Canada or of this Legislature, in respect of the same cause

of action, such workman, representatives or persons shall not, so far as this Legislature has power so to enact, be entitled thereafter to receive in respect of the same cause of action, any such penalty or damages, or part of a penalty or damages, under any such last-mentioned Act. R.S.O. 1897, c. 160, s. 12.

13.—(1) Notice in respect of an injury shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or if there are more employers than one, upon one of such employers.

(2) The notice may be served by delivering it to or at the residence or place of business of the person on whom it is to be served.

(3) The notice may also be served by sending it by registered post, addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(4) Where the employer is a body of persons corporate or unincorporate the notice shall be served by delivering it at or by sending it by registered post addressed to the office, or if there are more offices than one, to any one of such offices.

(5) The want or insufficiency of the notice required by this section, or by section 9, shall not be a bar to the maintenance of an action for the recovery of compensation for the injury if the Court or Judge before whom such action is tried, or, in case of appeal, if the Court hearing the appeal is of opinion that there was reasonable excuse for such want or insufficiency, and that the defendant has not been thereby prejudiced in his defence.

(6) A notice under this section shall be sufficient if in the form or to the effect following:—

To A.B., of (here insert the employer's address)

or

To the Company, (or as the case may be.)

Take notice, that on the day of 19, C.D., of (insert address of injured person) a workman in your employment sustained personal injury, (add, of which he died, if such be the case), and that such injury was caused by (state shortly the cause of injury, e.g., the fall of a beam).

(Date.)

Yours, etc.,
X.Y.

R.S.O. 1897, c. 160, s. 13.

Defence of
want of
notice or not
the plaintiff's
employer.

14. If the defendant in any action against an employer for compensation for an injury sustained by a workman in the course of his employment intends to rely for a defence on the want of notice or the insufficiency of notice, or on the ground that he was not the employer of the workman injured, he shall, not less than seven days before the hearing of the action, or such other time as may be fixed by the rules regulating the practice of the Court in which the action is brought, give notice to the plaintiff of his intention to rely on that defence, and the Court may, in its discretion, and upon such terms and conditions as may be just in that behalf, order and allow an adjournment of the case for the purpose of enabling such notice to be given; and, subject to any such terms and conditions, any notice given pursuant to and in compliance with the order in that behalf, shall, as to any such action and for all purposes thereof, be held to be a notice given pursuant to and in conformity with sections 9 and 13. R.S.O. 1897, c. 160, s. 14.

Particulars of
demand.

15. In an action brought under this Act the particulars of demand or statement of claim shall state in ordinary language the cause of the injury, and the date at which it was sustained, and the amount of compensation claimed; and where the action is brought by more than one plaintiff, the amount of compensation claimed by each plaintiff, and where the injury of which the plaintiff complains shall have arisen by reason of the negligence, act, or omission of any person in the service of the defendant, the particulars shall give the name and description of such person. R.S.O. 1897, c. 160, s. 15.

Application
for appoint-
ment of
assessors.

16.—(1) Upon the trial of an action for recovery of compensation under this Act before a Judge without a jury, one or more assessors may be appointed by the Court or Judge for the purpose of ascertaining the amount of compensation; and the remuneration, if any, to be paid to such assessors shall be fixed and determined by the Judge at the trial.

Who may act.

(2) Any person who shall, as hereinafter provided, be appointed to act as an assessor in such action shall be qualified so to act.

Application for
appointment.

(3) In such action, a party who desires assessors to be appointed shall, ten clear days at least before the day for holding the Court at which the action is to be tried, file an application stating the number of assessors he proposes to be appointed, and the names, addresses and occupations of the persons who may have expressed their willingness in writing to act as assessors; and if the applicant has obtained the consent of the other party to the persons named being appointed, he shall file such consent with his application.

(4) Where the application for the appointment of as-^{Service.} sessor has been made by one party to an action only, he shall, eight clear days at least before the day for holding the Court at which the action is to be tried, serve a copy of the application, so filed, upon the other party, who may then either file an application for assessors, or file objections to one or more of the persons proposed.

(5) An application for the appointment of assessors may be in the form following, or to the like effect, namely:—^{Form of application.}

In the *(describing the Court)*

The Workmen's Compensation for Injuries Act.

BETWEEN

and

Plaintiff,

Defendant.

The plaintiff (or defendant) applies to have an assessor (or assessors) appointed to assist the Court in ascertaining the amount of compensation to be awarded to the plaintiff, should the judgment be in his favour, and he submits the names of the following persons, who have expressed their willingness in writing to act as assessors should they be appointed.

(Here set out the names, addresses and occupations of the persons above referred to.)

(If the other party consents to the appointment add the following):—

The defendant (or plaintiff) consents to the appointment of any of the persons above named to act as assessors in this action, as appears by his consent thereto filed herewith.

Dated this

day of

A.B.

The above named plaintiff, (or as the case may be).

(6) Where separate applications are filed by the parties, ^{Appointment.} no objection to the persons proposed shall be made by either party, but the Court or Judge may appoint from the persons named in each application one assessor or more, but the same number of assessors shall be appointed from the names given in each application. R.S.O. 1897, c. 160, s. 16.

17. Where any such action is brought in a Division ^{Assessors in Division Court.} Court the applications for the appointment of assessors, together with any objections made to the persons proposed, shall be transmitted by the clerk of the Court to the Judge. R.S.O. 1897, c. 160, s. 17.

18. Where application for the appointment of assessors ^{Appointment by Court or Judge.} is granted, the Court or Judge shall appoint such of the persons proposed for assessors as by the Court or Judge may be deemed fit, subject to the provisions contained in this Act. R.S.O. 1897, c. 160, s. 18.

19. Where an application for the appointment of assessors ^{Additional assessors.} has been filed, the Court or Judge may, at any time prior

Appointment
by Court on
its own
motion.

to the trial of the action, nominate one or more additional persons to act as assessors; and where no application for assessors has been made, the Court or Judge may appoint one or more persons to act as assessor or assessors in the action before or on the trial of the action. R.S.O. 1897, c. 160, s. 19.

Where as-
sessors do not
attend at
trial.

20. If at the time and place appointed for the trial all or any of the assessors appointed do not attend, the Court or Judge may either proceed to try the action with the assistance of such of the assessors, if any, as do attend, or may adjourn the trial generally, or upon any terms which the Court or Judge may think fit, or may appoint any person who may be available and who is willing to act, and who is not objected to, or who, if objected to, is objected to on some insufficient ground, or the Court or Judge may try the action without assessors. R.S.O. 1897, c. 160, s. 20.

Deposit of
assessor's fees.

21. Every person requiring the Court or Judge to be assisted by assessors shall at the time of filing his application deposit therewith the sum of \$4 for every assessor proposed, and such payment shall be considered as costs in the action, unless otherwise ordered by the Court or Judge; but where a person proposed as an assessor has in writing agreed and consented that he will not require his remuneration to be so deposited, no deposit in respect of such person shall be required. R.S.O. 1897, c. 160, s. 21.

Proviso.

By whom cost
of additional
assessors
borne.

22. Where an action is tried by the Court or Judge with the assistance of assessors in addition to or independently of any assessors proposed by the parties, the remuneration of such assessors shall be borne by the parties, or either of them, as the Court or Judge shall direct. R.S.O. 1897, c. 160, s. 22.

Where trial
does not take
place.

23. If after an assessor has been appointed the action is not tried, the Court or Judge may make an allowance to him in respect of any expense or trouble which he may have incurred by reason of his appointment, and direct the payment to be made out of any sum deposited for his remuneration. R.S.O. 1897, c. 160, s. 23.

Duty of
assessors.

24. The assessors shall sit with and assist the Court or Judge when required with their opinion and special knowledge for the purpose of ascertaining the amount of compensation, if any, which the plaintiff shall be entitled to recover. R.S.O. 1897, c. 160, s. 24.

Consolidation
of actions.

25.—(1) Where several actions are brought under this Act against a defendant in the same Court in respect of the same negligence, act or omission, the defendant shall be at liberty to apply to the Judge that the actions be consolidated.

(2) Applications for the consolidation of actions shall be made upon notice to the plaintiffs affected by such consolidation. R.S.O. 1897, c. 160, s. 25. Upon notice.

26.—(1) Where several actions are brought under this Act against a defendant in the same Court in respect of the same negligence, act or omission, the defendant, on filing an undertaking to be bound so far as his liability for such negligence, act or omission is concerned by the decision in such one of the said actions as may be selected by the Court or Judge, may apply to the Court or Judge for an order to stay the proceedings in the actions other than in the one so selected, until judgment is given in such selected action. Staying several actions to abide result of one.

(2) An application for a stay of proceedings may be made upon notice to the plaintiffs affected by the stay of proceedings or *ex parte*. R.S.O. 1897, c. 160, s. 26. Application for stay.

27. Upon the hearing of an application for the consolidation of actions or for a stay of proceedings, the Court or Judge may impose such terms and conditions and make such order in the matter as may be deemed just. R.S.O. 1897, c. 160, s. 27. Terms of consolidation or stay.

28. If an order is made by a Court or Judge upon an *ex parte* application to stay proceedings, it shall be competent to the plaintiffs affected by the order to apply to the Court or Judge, upon notice or *ex parte*, to vary or discharge the order, and upon such last mentioned application such order shall be made as the Court or Judge shall think fit, and the Court or Judge shall have power to dispose of the costs occasioned by such order as may be deemed just. R.S.O. 1897, c. 160, s. 28. Varying order.

29. If judgment in the selected action is given against the defendant, the plaintiffs in the actions stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their damages and costs. R.S.O. 1897, c. 160, s. 29. Removal of stay.

30.—(1) Where two or more persons are joined as plaintiffs under section 25, and the negligence, act or omission which is the cause of action is proved, the judgment shall be for all the plaintiffs, but the amount of compensation, if any, that each plaintiff is entitled to shall be separately found and set forth in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person and in such manner as the Court or Judge thinks fit. Damages to be separately assessed.

(2) If the defendant fails so to pay the several amounts of compensation and the costs awarded in the action, execution may issue as in an ordinary action, and if the proceeds of the execution are insufficient, after deducting Execution.

all costs, to pay the whole of the amounts awarded, a dividend shall be paid to each plaintiff, calculated upon the proportion of the amount awarded to the respective plaintiffs to the total amount realized after the deduction of all the costs of the action. R.S.O. 1897, c. 160, s. 30.

Admissions
by notice.

31. A defendant may by notice to the opposite party to be given or served at least six days before the day appointed for the trial of the action, admit the truth of any statement of his liability for any alleged negligence, act or omission as set forth or contained in the plaintiff's statement or particulars of claim in the action, and after such notice, the plaintiff shall not be allowed any expense thereafter incurred for the purpose of proving the matters so admitted. R.S.O. 1897, c. 160, s. 31.

Where time
expires on
a holiday.

32. Where the time for doing any act, taking any proceeding, or giving any notice under or required by this Act expires on a holiday such act, or proceeding, or notice shall, so far as regards the time of doing, taking or giving the same, be held to be duly and sufficiently done, taken or given, if done, taken or given, on the day next following which is not a holiday. R.S.O. 1897, c. 160, s. 32.

Forms and
rules.

33. In an action brought in any Court to recover compensation under this Act, the forms and methods and the rules and orders in force in the Court shall, subject to and save as otherwise provided by this Act, apply to and regulate all matters of pleading, practice and procedure in such action, and notwithstanding anything in this Act contained, the forms and methods and the pleadings, practice and procedure in any such action shall conform to and be regulated by any rules or orders in that behalf hereafter lawfully and duly made or prescribed with respect to actions brought in such Court. R.S.O. 1897, c. 160, s. 33.

Burden of
proof.

34. Where

(a) the machinery or other plant or works of or in a factory, or any part of such machinery, plant or works through or by reason of which the injury complained of was inflicted or occasioned or alleged to have been inflicted or occasioned is or are, by *The Factory, Shop and Office Building Act* or any other Act of this Legislature, or of the Parliament of Canada, required to be covered, guarded, protected or suitably enclosed in whole or in part or to be of a special or particular kind or quality or to be kept in a particular or specified state or condition; or

(b) dangerous structures or places or openings in or in connection with a factory are required by law to be kept securely guarded or protected or suitably enclosed as far as practicable, or to be

kept in some particular state or condition, or that facilities for so keeping them or any of them shall be provided; or

- (c) any part of a railway or railway track or railway bridge or other structure is required to be of a certain kind or character or to be constructed or kept by the company in any particular or specified way or manner as provided or contemplated by this Act or by *The Ontario Railway Act*, or by any other Act of this Legislature, or of the Parliament of Canada, Rev. Stat
c. 185.

then upon any trial or arbitration under this Act for the recovery of damages for injury to a workman arising out of the neglect or alleged neglect on the part of the person or company required to keep such machinery, buildings, structures, dangerous places, and railway track or structures in such a state, condition or manner or of the kind, character or quality before mentioned and as it is provided or contemplated by those Acts, and it is or becomes material to the issue on the trial or arbitration, the onus of proving that the same were so kept or in such condition or that facilities were provided for so keeping the same as the case may be or as the Act or Acts require, shall be upon the party to the action whose duty it was under any of the Acts to so keep such machinery, works, plant, dangerous places or any part thereof, or railway tracks or works and structures or any part thereof as by those Acts or any of them is required or provided. 62 Vict. (2), c. 18, s. 3.

PART II. ARBITRATION.

35. Notwithstanding anything in Part I., except where the claim is in respect of an injury resulting in death, all claims for damages under this Act may be disposed of by arbitration as herein provided. 62 Vict. (2), c. 18, s. 4. Settlement of
claims under
part I by
arbitration.

36. Proceedings under this Part by way of arbitration shall be begun and carried on in the county or district in which the accident happened or the injury was occasioned. 62 Vict. (2), c. 18, s. 5. Venue for
proceedings
under Act.

37. If the action is begun in a County Court, all applications may be made to the Judge of the Court instead of to a Judge of the Supreme Court in Chambers, and the Judge of the County Court shall have the same power and authority as a Judge of the Supreme Court in Chambers in respect of such applications, but the respondent shall not be entitled, where notice of arbitration is given and the amount claimed is within the jurisdiction of the County Court, to apply for an order directing that the proceedings shall be by action. 62 Vict. (2), c. 18, s. 6. Applications
to judge of
county court.

Notice of
arbitration.

38.—(1) If a workman claiming compensation for injuries under this Act desires to proceed by arbitration under this Part, he shall within four months from the date upon which such injuries were sustained serve a notice, Form 1, upon the person whom he claims to be liable, stating that his claim will be submitted to arbitration unless notice of objection is given as hereinafter provided.

Notice of
objection.

(2) If an employer objects to an arbitration he shall within ten days after the service upon him of such notice serve notice, Form 2, that at a time therein named, which shall not be more than eight days from the date thereof, he will apply to a Judge of the Supreme Court in Chambers for an order that any proceedings in respect of such injuries shall be by action and not by arbitration, and the Judge on hearing such application may in his discretion direct that proceedings are to be carried on by action on any of the following grounds:—

(a) If he finds that difficult questions of law not already judicially determined are likely to arise during the proceedings, or

(b) If it is made to appear that complicated questions of fact, difficult of determination, are likely to arise on the arbitration, and which should in his opinion be determined in an action and not by arbitration, or

(c) If the Judge of the County Court is for any reason or cause disqualified, and there is no Junior Judge.

Extension
of time.

(3) The Judge may by such order extend the time for commencing an action as he may deem proper.

Consent to
arbitration.

(4) Unless such notice of objection is given within ten days after the service on him of a notice of arbitration under subsection 1 the employer shall be deemed to consent to an arbitration, but where it is shown to the satisfaction of the Judge that the failure to give notice of objection was due to mistake, inadvertence, or oversight, or that there are other sufficient grounds, he may upon such terms as he may deem just, enlarge the time for giving such notice and such enlargement may be ordered although the application for the same is not made until after the expiration of the prescribed time. 62 Vict. (2), c. 18, s. 7.

Application
by defendant
in action to
have matter
disposed of by
arbitration.

39.—(1) Where proceedings are begun by action instead of by notice of arbitration, the defendant may apply to a Judge in Chambers for an order directing that the proceedings shall be taken and carried on by arbitration and not by action.

Order of Judge.

(2) The Judge to whom the application is made, if he is of opinion that the cause of action can be more conveniently

disposed of by arbitration than by action, and that the same should be disposed of by arbitration rather than by action, shall so order, and in that case no further proceedings shall be had in the suit or action, but proceedings shall be initiated and carried on by way of arbitration.

(3) The Judge may dispose of the costs of the action up to the date of the order, or may direct that such costs shall be in the discretion of the arbitrator. 62 Vict. (2), c. 18, s. 8. Disposition as to costs.

40. Either the issue of a writ or a notice of arbitration under this Part shall be a sufficient commencement of the action and a sufficient compliance with section 9, whether the proceedings are afterwards carried on by arbitration or by action. 62 Vict. (2), c. 18, s. 9. Commencement of action. Rev. Stat. c. 666.

41. Nothing in this Act contained shall dispense with the notice of injury required to be given by sections 9, 13 and 14. 62 Vict. (2), c. 18, s. 10. Notice of injury to be given.

42.—(1) In case the proceedings are to be by way of arbitration the claimant shall obtain an appointment from the Judge of the County Court of the county or district in which the injury was received, and shall serve a copy of such appointment upon the respondent, together with a notice, Form 3, of the time so appointed; and the Judge by the appointment shall name a day, hour and place, for proceeding with the hearing and such day shall be fixed with a view to as early a disposal of the case as appears practicable. Arbitration proceedings.

(2) If the claimant does not proceed with the arbitration with reasonable speed the respondent may obtain an appointment from the Judge of the County Court for the hearing and disposal of the case at a time to be named in such appointment and shall serve a copy of the appointment on the claimant; and on proof of such service the Judge may at the time appointed proceed with the hearing and make such disposal of the matter as may appear just. 62 Vict. (2), c. 18, s. 11. Right of respondent to expedite proceedings.

43.—(1) Where an order is made directing that the liability of the respondent to pay compensation to the claimant shall be determined by action, all proceedings upon the arbitration shall be stayed upon the filing of the order with the Clerk of the County Court and service thereof upon the claimant. Proceedings to be stayed.

(2) The claimant if he desires in such case to proceed shall do so by action. 62 Vict. (2), c. 18, s. 12. Right of action.

44. Within eight days after the notice to the respondent of the day upon which the arbitration will be proceeded with the respondent shall file with the Clerk of the County Court his statement of defence, Form 4, in which he may set up any Statement of defence.

defence which would be open to him upon the trial of an action in the Supreme Court, and shall serve a copy thereof upon the claimant. 62 Vict. (2), c. 18, s. 13.

Judge of another county may act on request.

45.—(1) If the Judge of the County Court is for any reason disqualified from acting or if he desires not to act, he may request some other Judge of a County Court to act for him, and the Judge acting on such request shall have all the jurisdiction conferred by this Act; and no act of such Judge shall be open to question on the alleged ground that he was not the proper Judge to perform the duty or that the same had not been regularly or otherwise assigned to him or had not been performed at such request or by such direction as the law requires.

Idem.

(2) When an application is made to a Judge of the Supreme Court in Chambers under section 37, he may direct that the Judge of the County Court of another county shall hear the arbitration; and in such case the travelling expenses of the Judge may be paid out of any moneys appropriated by this Legislature for that purpose. 62 Vict. (2), c. 18, s. 14.

Pleadings limited.

46. No pleadings or documents in the nature of pleadings shall be necessary where the matter is proceeded with by arbitration other than the notice of arbitration and the statement of defence hereinbefore mentioned. 62 Vict. (2), c. 18, s. 15.

Witnesses and evidence.

47.—(1) In any proceedings under this Act a Judge of the County Court may compel the attendance of witnesses and the production of documents in the same manner and to the same extent as in an action in the County Court and shall possess the same powers in respect of all such proceedings as he would possess in an action in such Court and the claimant or respondent shall have the same right to examine the opposite party for discovery or otherwise, and the Judge shall have the same power to direct the examination of witnesses by commission as in such an action.

Subpoenas.

(2) Subpoenas for witnesses may be issued out of a County Court on *præcipe*. 62 Vict. (2), c. 18, s. 16.

Employment of shorthand reporter.

48. If the parties so desire or the Judge so directs the evidence may be taken by a shorthand writer; and the cost of such shorthand writer shall be borne by the parties equally unless the Judge otherwise directs, and copies of evidence shall be paid for on the scale allowed to special examiners in proceedings in the County Court. 62 Vict. (2), c. 18, s. 17.

Referring questions of law.

49. A Judge of the County Court may submit any question of law for the decision of a Judge of the

Supreme Court in Chambers or the Court; and the decision of such Judge on any question of law, so submitted shall be final. 62 Vict. (2), c. 18, s. 18.

50.—(1) The costs of and incidental to the arbitration ^{Costs.} and proceedings connected therewith shall be on the scale allowed in actions in the County Court and shall be subject to taxation in the same manner; and in all cases shall be in the discretion of the Judge.

(2) The Judge may fix the costs of the arbitration or of ^{Powers of Judge as to.} any other proceedings before him as between the parties instead of directing taxation thereof, and he may also fix the costs as between the solicitor of either party and his client on the application of either. 62 Vict. (2), c. 18, s. 19.

51. The Judge of the County Court shall make his award ^{Effect of award.} in writing, Form 5, and upon the filing of the same with the Clerk of the Court it shall become and be a judgment of the Court and execution may be issued thereon in the same manner as on a judgment in an action. 62 Vict. (2), c. 18, s. 20.

52. Where the amount of compensation payable under ^{Agreement as to compensation.} Part I. has been ascertained by agreement between the parties a memorandum of such agreement shall be delivered or sent by registered post to the Clerk of the County Court, who shall, on being satisfied as to its genuineness record such memorandum in a special register upon payment of a fee of \$1 and thereupon such memorandum shall for all purposes become and be a judgment of the Court and shall be enforceable as a judgment, but a Judge of the Court may at any time rectify such register. 62 Vict. (2), c. 18, s. 21.

53.—(1) The duties by this Act imposed upon a Judge ^{Duties of judges and officers of courts.} of a County Court and upon the Clerk and other officers of such court shall be part of their duties as officers of the Court, and no fees shall be payable to the Judge except a fee of \$10, or to any officer of the Court in connection with any arbitration other than the ordinary fees in an action in the County Court as for similar work.

(2) Any sum awarded or agreed upon as compensation ^{Payment of sum awarded.} shall be paid on receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him or to claim a lien on or to deduct any amount for costs from the said sum awarded except such sum as may be awarded by the Judge on an application, Form 6, made by either party to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation if the Judge so directs. 62 Vict. (2), c. 18, s. 22.

Appeal.

54.—(1) Any party to an arbitration under this Part may appeal from the decision of the arbitrator to a Divisional Court, and sections 38 to 46 of *The County Courts Act* shall, so far as applicable, apply to such appeals.

Rev. Stat.
c. 59.

Remitting
matter to
Judge of
County Court.

(2) The Court shall also have power on hearing any such appeal, to remit the matter for the re-consideration of the Judge. 62 Vict. (2), c. 18, s. 23.

Rules.

55.—(1) The Judges of the Supreme Court shall have the same authority to make Rules of Court with respect to proceedings under this Part as under *The Judicature Act* they have with respect to procedure in the Supreme Court.

Rev. Stat.
c. 56.

Practice in
cases unpro-
vided for.

(2) Until provision is made in that behalf in any matters which are unprovided for by this Part, the rules of practice applicable to proceedings in the County Court shall, as nearly as may be, be followed. 62 Vict. (2), c. 18, s. 24.

Amount
recoverable.

56. In any arbitration under this Part the claimant shall not to be limited to the amount recoverable in an action in the County Court, but may recover the same amount as is provided in case of actions under Part I. 62 Vict. (2), c. 18, s. 25.

Arbitration
optional.

57. Nothing in this Part shall oblige a claimant to proceed by way of arbitration, but he may bring an action if he deems fit. 62 Vict. (2), c. 18, s. 26.

Rev. Stat.
c. 65 not to
apply.

58. *The Arbitration Act* shall not apply to an arbitration under this Part. 62 Vict. (2), c. 18, s. 27.

Use of forms.

59. The forms appended to this Act with such variations as may be necessary may be used by any party to an arbitration. 62 Vict. (2), c. 18, s. 28.

FORM 1.

(Section 38 (1).)

NOTICE OF ARBITRATION BY AN INJURED WORKMAN WITH RESPECT TO
THE COMPENSATION PAYABLE TO HIM.

In the County (or District) Court of the County (or District) of

In the matter of *The Workmen's Compensation for Injuries Act.*

Between

A.B.

Claimant,
and

C.D. & Co., Limited,

Respondents.

Take notice that A.B. proposes to submit to arbitration his claim for compensation under the said Act, in respect of personal injury caused to him by accident arising out of and in course of his employment.

If you object to an arbitration you are to notify A.B. of such objection within ten days from the service of this notice upon you otherwise you will be deemed to have assented to such arbitration and the same will be proceeded with at such time as may be appointed by the judge of the county court of the county of the arbitrator in this matter.

Particulars are hereto appended (or annexed).

PARTICULARS.

1. Name and address of injured workman.
2. Name, place of business and nature of business of respondents.
3. Nature of employment of workman at time of accident, and whether employed under respondents or under contractors with them. (If employed under contractors, who are not respondents, name and place of business of contractors to be stated).
4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident and cause of injury.
5. Nature of injury.
6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.
7. Average weekly earnings during the 12 months previous to the injury, if the workman had been so long employed under the same employer, or, if not, during any less period during which he had been so employed.
8. Estimated average amount which the workman is able to earn after the accident.
9. Payments not being wages received from employer in respect of the injury during the period of incapacity.
10. Amount claimed as compensation.
11. Date of service of statutory notice of accident on respondents. (*A copy of the notice to be annexed.*)
12. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the applicant,

Of his solicitor,

The names and addresses of the respondents to be served with this application:

Dated this day of

(Signed),

Claimant.

or

Claimant's Solicitor.

FORM 2.

(Section 38 (2).)

NOTICE OF OBJECTION TO ARBITRATION.

(Heading as in Notice of Arbitration.)

Take notice, that a motion will be made before the presiding Judge in Chambers at Osgoode Hall Toronto, (or as the case may be) on the day of next, at the hour of o'clock in the forenoon, or so soon thereafter as the application can be heard, for an order directing that any proceedings in this matter be by action and not by arbitration. The application is made on the following grounds:

(Here state grounds.)

FORM 3.

(Section 42 (1).)

NOTICE TO RESPONDENT OF DAY UPON WHICH ARBITRATION WILL BE PROCEEDED WITH.

(Heading as in Notice of Arbitration.)

TAKE NOTICE: That the Judge of this Court will proceed with the arbitration herein, at on the day of at the hour of o'clock in the noon; and that if you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

And further take notice that if you wish to disclaim any interest in the subject-matter of the arbitration, or consider that the particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge, or intend to rely on any fact, or to deny, wholly or partially, your liability to pay compensation under the Act, you must file an answer, stating your name and address and the name and address of your solicitor, if any, and stating that you disclaim any interest in the subject-matter of the arbitration, or stating in what respect the particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge, or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge, and a copy for the applicant and for each of the other respondents, must be filed with the Clerk of the Court 5 clear days, at least before the day of

If no answer is filed and subject to such answer, if any, the particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of

To

of

(Signed),

Claimant.

or

Claimant's Solicitor.

FORM 4.

(Section 44.)

ANSWER BY RESPONDENTS.

(Heading as in Notice of Arbitration.)

Take notice that the respondents, C.D. & Co., Limited, intend, at the hearing of the arbitration, to give in evidence and rely on the following facts:—

That no notice of the alleged action was given to the respondents as required by section 13 of *The Workmen's Compensation for Injuries Act*;

That the claim for compensation with respect to the alleged accident was not made within twelve weeks from the occurrence of the accident;

or

That the respondents, C.D. & Co., Limited, deny their liability to pay compensation under the above mentioned Act in respect of the injury to A.B., mentioned in the Claimant's particulars, and that the grounds on which they deny their liability are:—

That the employment of the said A.B. was not an employment to which the said Act applies;

or

That the said injury to the said A.B. was not caused by accident arising out of and in the course of his employment;

or

Any other ground of defence.

FORM 5.

(Section 51.)

AWARD.

In case of application by workman.

(Heading as in Notice of Arbitration.)

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

1. I order that the respondents, C.D. & Co., Limited, do pay to the claimant, A.B., the sum of _____ as compensation for personal injury caused to the said A.B., on the _____ day of _____, by accident arising out of and in the course of his employment as a workman employed by the said C.D. & Co., in (state nature of employment).

2. And I order that the said C.D. & Co. do pay to the claimant, (or as the case may be) his costs of and incident to this arbitration such costs in default of agreement between the parties as to the amount thereof, to be taxed by the clerk on the scale of costs in use in the county courts, and to be paid by the said C.D. & Co. to the claimant (or as the case may be) within 14 days from the date of the certificate of the result of such taxation (or if the judge fixes the costs or the parties agree upon them, this form to be adapted).

Dated this _____

day of _____

Judge.

FORM 6.

(Section 53 (2).)

NOTICE OF APPLICATION FOR DETERMINATION OF AMOUNT OF COSTS.

In the County (or District) Court of holden at

(Title as in Award or Memorandum.)

TAKE NOTICE: That I intend to apply to the judge at
on the day of at the hour of
 o'clock in the noon, to determine the amount
of costs to be paid to me as solicitor (or agent) for you A.B. in
the above mentioned matter; and for an order declaring that I am
entitled to a lien for such amount on or to deduct such amount from
the sum awarded as compensation to you the said A.B. in
the above mentioned matter and for consequential directions.

Dated this day of

Applicant.

To the Clerk of the Court
and to
A.B.
of

CHAPTER 147.

An Act respecting Apprentices and Minors.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Apprentices and Minors Act*. 1 Geo. V. c. 31, s. 1.

INTERPRETATION.

2. In this Act,

(a) "County" shall include district.

Interpreta-
tion.

"County."

(b) "County Court" shall include District Court.

"County
Court."

(c) "Master" shall include any person or number of persons, male or female, carrying on business, singly or in partnership, and a body corporate.
1 Geo. V. c. 31, s. 2.

"Master."

MINORS AND GUARDIANSHIP.

3.—(1) A parent, guardian, or other person having the care or charge of a minor, or a charitable society authorized by the Lieutenant-Governor in Council to exercise the powers conferred by this Act, and having the care or charge of a minor, with the consent of the minor if a male not under the age of fourteen years, or a female not under the age of twelve years, and without such consent, if the minor is under such age, may, by instrument in writing, constitute to be the guardian of the minor any respectable trustworthy person who is willing to assume, and by agreement assumes, the duty of a parent towards the minor; but the parent shall remain liable for the performance of any duty imposed on him by law if the guardian fails in the performance thereof.

Appoint-
ment of
guardians to
minors.

(2) The guardian shall thereupon possess the same authority over the minor as he would have were the minor his own child, and shall be bound to perform the duties of a parent towards such minor. 1 Geo. V. c. 31, s. 3.

Authority of
guardians.

4. No minor who has been abandoned by his parent or guardian, or who is dependent upon charity for support, shall be removed from any public or private charitable institution, or from the custody or control of any private person who is charitably taking care of him, by the father or mother or

Where parents
and guardians
deprived of
custody.

guardian of the minor against the will of the head of such public or private charitable institution, or of such private person, without an order for such removal of a Judge of the Supreme Court, or of the Judge of the County Court of the county, or the mayor or police magistrate of the city or town where the minor is; and the Judge or other person empowered to make the order for removal may refuse to make the same unless he is satisfied that the removal will tend to the advantage and benefit of the minor. 1 Geo. V. c. 31, s. 4.

Power of certain minors to bind themselves to labour.

5. Where a minor over the age of sixteen years who has no parent or guardian, or who does not reside with him, enters into an engagement, written or verbal, to perform any service or work he shall be liable upon, and shall have the benefit of the same, as if he had been of full age. 1 Geo. V. c. 31, s. 5.

APPRENTICING MINORS.

Power of parents, charitable societies, etc., to bind minors.

6. A parent, guardian or other person having the care or charge of a minor, or any charitable society authorized by the Lieutenant-Governor in Council to exercise the powers conferred by this Act, and having the care or charge of a minor, who is a male and not under the age of fourteen years, may with his consent bind him as an apprentice by agreement in writing to any respectable and trustworthy master-mechanic, farmer, or other person carrying on a trade or calling, for a term not to extend beyond the minority of the apprentice; or in the case of a female not under the age of twelve years, may, with her consent, bind her to any respectable and trustworthy person carrying on any trade or calling, or to domestic service with any respectable and trustworthy person for any term not to extend beyond the time when she attains the age of eighteen years. 1 Geo. V. c. 31, s. 6.

Power given to the mother when the father abandons his infant children.

7. Where the father of a minor abandons and leaves him with the mother the mother, with the approbation of two justices of the peace of the county or city in which she resides, may bind the child as an apprentice to any of the persons mentioned in the next preceding section, until the minor attains the age of twenty-one years in the case of a male and eighteen years in the case of a female; and an agreement in writing to that effect under the hand and seal of the mother and countersigned by such justices shall be valid; but no minor who has attained the age of fourteen years shall be so apprenticed unless he or she consents. 1 Geo. V. c. 31, s. 7.

Apprenticeship by Mayor, Judge, etc.

8. In a city or town the mayor, a Judge of the County Court or a police magistrate, and in a county a Judge of

the County Court may bind for the like period to any of the persons referred to in section 6, with the consent of such person and of the minor, or if the minor is a male under the age of fourteen years or a female under the age of twelve years then without the consent of the minor, any minor who is an orphan or has been deserted by his parents or guardian, or whose parents or guardian have been committed to and are confined in a common gaol or house of correction, or any minor who is dependent upon public charity for support; and such apprentice and his master shall be held in the same manner as if the apprentice had been bound by his parent. 1 Geo. V. c. 31, s. 8.

9. All wages agreed by an indenture or otherwise to be paid for the service of a minor, shall, if not payable to the parent, be either payable to the minor or to some person for his benefit. 1 Geo. V. c. 31, s. 9. Wages of minors.

10. If the master of an apprentice dies, the apprentice, if a male, shall by operation of law be transferred to the person, if any, who continues the establishment or business of the deceased master; and such person shall hold the apprentice upon the same terms as the master, if alive, would have done. 1 Geo. V. c. 31, s. 10. Transference by death.

11. A master may, with the consent of his apprentice, transfer him to any person who is competent to receive or take an apprentice and who carries on the same kind of business. 1 Geo. V. c. 31, s. 11. Transference by consent.

12. Every master shall provide his apprentice during the term of his apprenticeship with suitable board, lodging and clothing, or such equivalent therefor as is mentioned in the agreement, and with medical attendance, and shall also properly teach and instruct him, or cause him to be taught and instructed in his trade or calling. 1 Geo. V. c. 31, s. 12. Duties of masters towards apprentices.

13. Every apprentice shall, during the term of his apprenticeship, faithfully serve his master, and obey all his lawful and reasonable commands, and shall not absent himself from his service, day or night, without his consent. 1 Geo. V. c. 31, s. 13. Duty of apprentices.

COMPLAINTS.

14.—(1) A Judge of the County Court or a police magistrate having jurisdiction within the county or city in which the master resides, upon complaint made by a minor bound under the provisions of this Act, or by any person on his behalf, or by the person to whom an apprentice is bound, may alter the mode in which payment of wages is to be made, by directing payment to the apprentice or to some other person, in lieu of the manner provided in the agree- Alteration in mode of payment of wages upon application for the purpose.

Annulment
of indenture
for misconduct.

ment; or may upon proof of gross misconduct or neglect of duty annul the agreement of apprenticeship or of service, and may compel the person in whose possession, power, custody or control the agreement is to produce and deliver the same in Court in order to have it cancelled, or to have the order varying it endorsed thereon, as the case may require.

Committal
for refusing
to produce
indenture.

(2) The Judge or police magistrate may, after allowing a reasonable time for production and delivery of the agreement, issue a warrant for the imprisonment of the person in default for any term not exceeding six months unless it is sooner produced and delivered. 1 Geo. V. c. 31, s. 14.

Emancipa-
tion from
authority of
guardian.

15. A Judge of the County Court or a police magistrate having jurisdiction in the county or city in which the guardian resides, upon complaint of any minor over whom a person has been appointed guardian under section 3, or of any person on behalf of the minor, and upon proof of gross misconduct or neglect of duty on the part of the guardian may emancipate the minor from his authority. 1 Geo. V. c. 31, s. 15.

Cancellation
of indenture
of appren-
ticeship or
appointment
of guardian.

16. A Judge of the County Court in any case, and a police magistrate in case the apprenticing of a minor or the appointment of a guardian under this Act has not been by the parent of the minor, such Judge or police magistrate having jurisdiction in the county or city in which the master or guardian resides may, on the application of either the parent or the minor, cancel the agreement of apprenticeship or service if satisfied that the same was injudiciously or improperly entered into; or cancel the appointment of the guardian, and restore the minor to the parent, if satisfied that the parent is a fit and proper person to take charge of him; and when such cancellation of the guardianship is on the application of the parent his authority shall revive. 1 Geo. V. c. 31, s. 16.

Liability of
apprentice
deserting his
master's ser-
vice.

17. Where an apprentice absents himself from his master's service or employment before the expiration of his apprenticeship, he may at any time, if found in Ontario, be compelled to serve his master for so long a time as he so absented himself unless he makes satisfaction to his master for the loss sustained by his absence. 1 Geo. V. c. 31, s. 17.

How com-
plaints may
be heard.

18.—(1) If the apprentice refuses to serve or to make satisfaction to his master as provided by the next preceding section, or to obey the lawful commands of his master, or in any other way refuses or neglects to perform his duty to his master, and if the master, or his overseer or agent, complains on oath to a justice of the peace, either in the county, city or town where the master resides, or in any

county, city or town where the apprentice is found, the justice may cause the apprentice to be summoned to appear or to be apprehended and brought before him, or before some other justice of the peace; and the justice, upon hearing the complaint, shall determine what satisfaction shall be made by the apprentice to the master.

(2) If the apprentice does not give or make such satisfaction immediately, or, where the satisfaction is of such a nature as not to admit of immediate performance, if he does not give sufficient security to make such satisfaction, the justice may commit the apprentice to the common gaol or house of correction of the county, city or town for any period not exceeding three months; and such imprisonment shall not release the apprentice from the obligation to make up the lost time to the master. 1 Geo. V. c. 31, s. 18.

Commitment of apprentice in certain cases, etc.

19. Where the apprentice has not left Ontario or, having left Ontario, has returned thereto, the master shall not proceed against the apprentice under this Act after one year next from the expiration of the term for which the apprentice contracted to serve, or from his return, as the case may be. 1 Geo. V. c. 31, s. 19.

Limitation of proceedings against absconding apprentice.

20. Any person who knowingly harbours or employs an absconding apprentice shall pay to his master the full value of the apprentice's labour; and such value shall be what the master would have received from the labour and service of the apprentice if he had continued faithfully in his master's service; and the master may recover the same in any Court having jurisdiction where the apprentice has been employed or where the master resides. 1 Geo. V. c. 31, s. 20.

Penalty for employing or harboring absconding apprentices.

21. Where an apprentice becomes insane, or is convicted of an indictable offence, or is sentenced to the Ontario Reformatory, a reformatory or the penitentiary, or is sent to an industrial school, or absconds, his master may, within one month thereafter, but not afterwards, avoid the agreement of apprenticeship or service from the time he gives notice in writing of his intention to do so to the other parties to the agreement, either by serving them with the notice or by inserting it in the *Ontario Gazette* or in a newspaper published in the county or city where the master resides. 1 Geo. V. c. 31, s. 21.

When master may avoid indenture.

22. The Court of General Sessions of the Peace shall have concurrent primary jurisdiction over offences against this Act, and shall also have authority to make any order which under this Act may be made by a Judge of a County Court. 1 Geo. V. c. 31, s. 22.

Jurisdiction of General Sessions.

Costs.

23. The Court of General Sessions of the Peace, Judge, police magistrate or justice may, on any complaint or other proceeding under this Act, make such order as to payment of costs as may appear just. 1 Geo. V. c. 31, s. 23.

Application of fines.

24. All fines imposed and collected under this Act shall be paid to the treasurer of the county or city in which the offence was committed. 1 Geo. V. c. 31, s. 24.

APPEALS.

Appeal from Justice or Police Magistrate.

Rev. Stat. c. 90.

25. Either party may, except as to matters provided for in the next following section, appeal from any decision of a justice or police magistrate, under this Act, as is provided by *The Ontario Summary Convictions Act* in the case of a summary conviction. 1 Geo. V. c. 31, s. 25.

Appeal to a Judge in Chambers.

26.—(1) An appeal shall lie to a Judge of the Supreme Court in Chambers from any order or decision of a Court of General Sessions of the Peace or of a Judge of the County Court or of a police magistrate, cancelling or varying or refusing to cancel or vary an agreement of apprenticeship or service, or cancelling or refusing to cancel the appointment of a guardian.

Proceedings on appeal.

(2) The appeal shall be by notice of motion which shall be served upon the opposite party within ten days from the day upon which the order or decision was made, unless a Judge of the Supreme Court or the Master in Chambers allows further time; and the motion shall be returnable upon the first chamber day after the tenth day from the day of service of the notice.

Terms.

(3) The Judge or Master in Chambers in granting further time may impose such terms as to further evidence, costs and otherwise as he sees fit.

Order of Judge.

(4) The Judge, upon consideration of the evidence taken upon the hearing, a certified copy whereof shall be produced before him, and such further evidence, if any, may make such order in the premises, and as to costs and otherwise, as he may deem just, and before adjudicating upon the appeal, he may, upon such terms as he may deem just, permit further evidence, either written or oral, to be adduced. 1 Geo. V. c. 31, s. 26.

Further evidence.

POWERS OF CHARITABLE SOCIETIES.

Charitable societies may be authorized to exercise powers under this Act.

27. The Lieutenant-Governor in Council may authorize any charitable society, incorporated or unincorporated, to exercise for a limited time or otherwise the powers conferred by this Act, and may revoke or suspend any Order in Council made for that purpose. 1 Geo. V. c. 31, s. 27.

SECTION XII.

LAWS AFFECTING SPECIAL
CLASSES OF PERSONS

1. HUSBAND AND WIFE.

CHAPTER 148.

An Act respecting the Solemnization of Marriage.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Marriage Act*. 1 Geo. V. Short title.
c. 32, s. 1.

WHO MAY SOLEMNIZE MARRIAGES.

2. The following persons, being men and resident in Canada, may solemnize marriage between persons not under a legal disqualification to contract such marriage:

Who may
solemnize
marriage in
Ontario.

- (a) The ministers and clergymen of every church and religious denomination duly ordained or appointed according to the rites and ceremonies of the church or denomination to which they respectively belong; Ministers and clergymen.
- (b) Any elder, evangelist or missionary for the time being of any church or congregation of the religious people commonly called or known congregationally as "Congregations of God" or "Congregations of Christ," and individually as "Disciples of Christ," who, from time to time, is chosen by any such congregation for the solemnization of marriages; Elders, etc., Congregations of God and Disciples of Christ.
- (c) Any duly appointed commissioner or staff officer of the religious society called the Salvation Army. Officers of Salvation Army.

Army chosen or commissioned by the society to solemnize marriages;

Elders of
Farrington
Independent
Church.

(d) Any elder for the time being of the church or congregation of religious people commonly called or known congregationally as "Farrington Independent Church," who, from time to time, is chosen by such church or congregation for the solemnization of marriages;

Minister of
the Breth-
ren.

(e) Any recognized evangelist, teacher or elder for the time being of any congregation of Christians commonly called or known as "Brethren" who may be appointed by any such congregation for the solemnization of marriages, and whose appointment has previously been filed in the office of the Provincial Secretary. 1 Geo. V. c. 32, s. 2.

Marriages
solemnized
by Quakers.

Rev. Stat. c. 49.

3. Every marriage duly solemnized according to the rites, usages and customs of the religious Society of Friends, commonly called Quakers, shall be valid; and all the duties imposed by this Act, or by *The Vital Statistics Act*, upon a minister or clergyman, shall, with regard to such marriage, be performed by the clerk or secretary of the society or of the meeting at which the marriage is solemnized; but nothing herein shall require the marriage to be celebrated or solemnized by such clerk or secretary. 1 Geo. V. c. 32, s. 3.

LICENSE, CERTIFICATE OR PROCLAMATION REQUIRED.

Marriages
not to be
solemnized
unless
under
license or
certificate.

4.—(1) No minister, clergyman or other person shall solemnize any marriage unless duly authorized so to do by license under the hand and seal of the Lieutenant-Governor or of his deputy, or by a certificate under this Act, unless the intention of the persons to intermarry has been published as provided by subsection 2.

Or after
proclama-
tion of in-
tention.

(2) Such intention shall be proclaimed once openly, and in an audible voice, either in the church, chapel or meeting-house in which one of the persons has been in the habit of attending worship, or in some church, chapel, meeting-house or place of public worship of the congregation or religious body with which the minister or clergyman who performs the ceremony is connected, in the local municipality, parish, circuit or pastoral charge, where one of the persons has, for the space of fifteen days immediately preceding, had his or her usual place of abode; and where both the persons do not reside in the same local municipality, parish, circuit or pastoral charge, and the marriage is not authorized by license or certificate, a similar proclamation shall be made in the local municipality, parish, circuit or pastoral charge, being within Canada, where the other of the contracting parties has, for the space of fifteen days immediately pre-

ceding, had his or her usual place of abode; and where the proclamation last mentioned is required such marriage shall not be solemnized until there is delivered to the person proposing to solemnize it a certificate, Form 1, showing that such proclamation has been made.

(3) Every such proclamation shall be made on a Sunday, immediately before the service begins or immediately after it ends, or at some intermediate part of the service. Made on Sunday.

(4) The certificate of proclamation shall be signed by the clergyman, minister, clerk, secretary or other person who actually proclaimed the same, and shall show the official position of the person who signs it. 1 Geo. V. c. 32, s. 4. Certificate of proclamation of intention.

5.—(1) No marriage shall be solemnized under the authority of any proclamation of intention to intermarry unless such proclamation has been made at least one week previously, nor unless the marriage takes place within three months after the Sunday upon which the proclamation was made; nor shall a marriage be solemnized under the authority of any license or certificate unless within three months after the date thereof. Proclamation or license to lapse unless marriage takes place within three months.

(2) No clergyman, minister or other person shall solemnize a marriage between the hours of 10 o'clock after noon and 6 o'clock before noon unless he is satisfied from evidence adduced to him that the proposed marriage is legal and that exceptional circumstances exist which render its solemnization between those hours advisable. Hours during which marriages not to take place.

(3) No clergyman, minister or other person shall solemnize a marriage without the presence of at least two adult witnesses, and two or more of such witnesses shall affix their names as witnesses to the record in the register prescribed by section 27. Witnesses required.

(4) No clergyman, minister or other person who is an issuer of marriage licenses shall solemnize the marriage in any case in which he has issued the license or the certificate provided for by section 7 authorizing such marriage, but this subsection shall not apply to any of the provisional judicial districts except Muskoka. Issuer of marriage licenses not to solemnize the marriage. Exceptions.

(5) The certificate or license to marry or the certificate of proclamation, when such certificate is required, shall be left with the clergyman, minister or other person who solemnizes the marriage, and he shall forthwith after such solemnization endorse upon the certificate or license the particulars mentioned in Form 4, and thereupon forward such certificate or license to the Registrar-General. 1 Geo. V. c. 32, s. 5; 2 Geo. V. c. 17, s. 30 (1). License and certificates to be delivered to person solemnizing marriage.

Protection of
clergymen
solemnizing
marriages in
good faith.

6. No clergyman, minister or other person who solemnizes a marriage ceremony after banns have been published or a license or certificate has been issued under this Act in respect thereto shall be subject to any action or liability for damages or otherwise by reason of there having been any legal impediment to the marriage unless, at the time when he performed the ceremony, he was aware of the impediment. 1 Geo. V. c. 32, s. 6.

Certificate in
lieu of
marriage
license.

7. A certificate, Form 2, according to the circumstances of the case may, at the option of the applicant, be substituted and shall have the same legal effect as a license. 1 Geo. V. c. 32, s. 7.

Issue of Licenses and Certificates.

Licenses and
certificates,
how issued.

8. Licenses and certificates shall be issued from the office of the Provincial Secretary and shall be furnished to persons requiring the same by such persons as the Lieutenant-Governor in Council may appoint for that purpose. 1 Geo. V. c. 32, s. 8.

Validity of
licenses and
certificates.

9. Every license under the hand and seal of the Lieutenant-Governor or his deputy, and every certificate signed by the Provincial Secretary or Assistant Provincial Secretary, for the purpose of the solemnization of a marriage, shall be and remain valid notwithstanding that the Lieutenant-Governor or his deputy, or the Provincial Secretary or the Assistant Provincial Secretary has ceased to hold office before the time of the issue of the license or certificate. 1 Geo. V. c. 32, s. 9.

Unauthor-
ized issue of
licenses or
certificates.

10. If any person issues any license or certificate for the solemnization of marriage without the authority of the Lieutenant-Governor in Council, unless under the authority of section 11, he shall incur a penalty of \$100 for every license or certificate so issued recoverable under *The Ontario*

Penalty.

Rev. Stat. c. 90.

Summary Convictions Act. 1 Geo. V. c. 32, s. 10.

Appointment of Deputy Issuers.

Appoint-
ment of
deputy-
issuers of
marriage
licenses with
approval of
mayor or
reeve.

11.—(1) An issuer of marriage licenses or certificates may, with the approval, in writing, of the mayor or reeve of the local municipality wherein he resides, when prevented from acting by illness or accident, or where his temporary absence is contemplated, appoint by writing under his hand a deputy to act for him.

Powers of
deputy-
issuers.

(2) The deputy while so acting shall possess the powers and privileges, as to administering necessary oaths and otherwise, of the issuer appointing him.

(3) The issuer shall, upon appointing a deputy, forthwith transmit to the Provincial Secretary a notice of the appointment, and of the cause thereof, and of the name and official position of the person by whom the appointment has been approved, and the Lieutenant-Governor may at any time annul the appointment.

Notice of appointment of deputy.

(4) Where there is no mayor or reeve to give the approval required by subsection 1 the issuer may, without such consent, appoint such deputy, and the licenses or certificates issued by such deputy shall be deemed to authorize the solemnization of marriages at the same places as licenses or certificates issued by the issuer, and no irregularity in the appointment of a deputy shall affect the validity of a license or certificate issued by him.

Appointment of deputy where no Mayor or Reeve.

(5) The deputy shall sign each license and certificate issued by him with the name of the issuer as well as his own name in the following manner:—"A. B.—*Issuer of Marriage Licenses, per C.D., Deputy-Issuer.*" 1 Geo. V. c. 32, s. 11.

How licenses to be signed by deputy.

Effect of Irregular Issue of License or Certificate.

12. No irregularity in the issue of a license or certificate, where it has been obtained or acted on in good faith, shall invalidate a marriage solemnized in pursuance thereof. 1 Geo. V. c. 32, s. 12.

Irregularity in issue not to affect.

Unissued Licenses or Certificates.

13. Every issuer of licenses or certificates and every other person having unissued licenses or certificates in his possession, power, custody, or control, shall, whenever required so to do, transmit the same to the Provincial Secretary; and the property in all unissued licenses and certificates shall be and remain in His Majesty. 1 Geo. V. c. 32, s. 13.

Unissued licenses to be returned to Provincial Secretary.

Expenses of Procuring Licenses.

14. All expenses incident to providing licenses and certificates shall be paid by the issuer thereof. 1 Geo. V. c. 32, s. 14.

Expenses incident to procuring licenses.

MARRIAGE OF PARTY UNDER 18 YEARS OF AGE.

15.—(1) Where either of the parties to an intended marriage, not a widower or a widow, is under the age of eighteen years, the consent of the father if living, or, if he is dead, of the mother if living, or of a guardian if any has been duly appointed, shall be required before the license is issued or before the proclamation of the intention of the parties to intermarry is made.

Consent required to marriage where one of the parties is under eighteen.

Consent to be produced before license issues.

(2) Where such consent is necessary no license or certificate shall be issued without the production of the consent, and the issuer or deputy-issuer shall satisfy himself of the genuineness of the consent by satisfactory proof in addition to the affidavit required of one of the parties.

Where parents are dead and there is no guardian.

(3) In the case of a party under the age of eighteen years, and not being a widower or a widow, if the father and mother are dead and there is no guardian duly appointed the issuer or deputy-issuer, on being satisfied as to the facts, may grant the license or certificate.

If parents not resident in the Province.

(4) Where the parent whose consent is required, though living, is not a resident of Ontario, and is not in Ontario at the time of the application for a license or certificate, and the party under the age of eighteen years is and has been so resident for the next preceding twelve months, the issuer or deputy-issuer, on being satisfied by evidence of these facts, may grant the license or certificate. 1 Geo. V. c. 32, s. 15.

No license to be issued or marriage to be celebrated where either party under fourteen.

16. No license or certificate shall be issued to any person under the age of fourteen years, except where a marriage is shown to be necessary to prevent the illegitimacy of offspring and a certificate to that effect is given by a legally qualified medical practitioner known to the issuer or deputy-issuer, and, except in such a case, no person shall celebrate the marriage ceremony in any case in which either of the contracting parties is under the age of fourteen years to the knowledge or information of such person. 1 Geo. V. c. 32, s. 16.

PENALTY FOR MARRYING IDIOT OR INSANE PERSON.

Insane or idiot or intoxicated person.

17. If any issuer of marriage licenses issues a license for a marriage or if any minister, clergyman or other person solemnizes a marriage, knowing or having reason to believe that either of the parties to the intended marriage or to the marriage is an idiot or insane or is under the influence of intoxicating liquor, he shall incur a penalty not exceeding \$500, and shall also be liable to imprisonment for any term not exceeding twelve months. 3-4 Geo. V. c. 28, s. 1, *part*.

PENALTY UPON DEPOSED MINISTER.

Penalty for deposed minister performing ceremony.

18. If any person who having been a minister, clergyman or other person having the right to solemnize marriage, has been deposed from his ministry, or deposed or removed from the office by virtue of which he was authorized to solemnize marriage, thereafter solemnizes or undertakes to solemnize any marriage, he shall incur a penalty of \$500, and shall also be liable to imprisonment for any term not exceeding twelve months. 3-4 Geo. V. c. 28, s. 1, *part*.

AFFIDAVIT FOR ISSUE OF LICENSE OR CERTIFICATE.

19.—(1) Before a license or certificate is issued one of the parties to the intended marriage shall personally make an affidavit, Form 3, before the issuer or deputy-issuer which shall state:

Affidavit to be made by one of the parties before license granted.

(a) in what county or district it is intended that the marriage shall be solemnized, and in what city, town, village, or place therein; and

(b) that he or she believes there is no affinity, consanguinity, prior marriage, or other lawful cause or legal impediment to bar or hinder the solemnization of the marriage;

(c) that one of the parties has for the space of fifteen days immediately preceding the issue of the license or certificate had his or her usual place of abode within the county or district in which, for either municipal or judicial purposes, the local municipality or place in which the marriage is to be solemnized lies. 1 Geo. V. c. 32, s. 18 (1), *part*; 3-4 Geo. V. c. 28, s. 2, *part*.

(d) the age of the deponent, and that the other contracting party is of the full age of eighteen years, or the age of such other contracting party, if under the age of eighteen years, as the case may be;

(e) the condition in life of each of the parties, whether bachelor, widower, spinster or widow, and

(f) the facts necessary to enable the issuer or deputy-issuer to judge whether or not the required consent has been duly given in the case of any party under the age of eighteen years, or whether or not such consent is necessary.

Facts showing whether consent is necessary.

(2) If the city, county or district in which it is intended that the marriage shall be solemnized is not that in which either of the parties has, for the space of fifteen days immediately preceding the issue of the license or certificate, had his or her usual place of abode, the license or certificate may nevertheless be issued upon the production of an affidavit by one of the parties stating that notice of the intended marriage, stating the name, occupation and usual place of abode of each of the parties, has been published once a week for three successive weeks immediately preceding the application for the license or certificate in some newspaper published in the municipality in which the marriage is to take place, or if there is no such newspaper, then in a newspaper published in the nearest adjoining municipality, and accompanied by the production of the respective issues of such newspaper containing such notice.

Where neither party has resided in locality for fifteen days.

Advertisement of notice and affidavit of publication.

When Registrar General may direct issue of license although notice not published.

(3) Upon an applicant for a license or certificate stating that he is unable to make the affidavit mentioned in the preceding subsection, and requesting the issuer or deputy issuer to report the circumstances of the case to the Registrar-General, the issuer or deputy issuer shall do so; and the Registrar-General, upon being satisfied that the reason for having the marriage solemnized in the place mentioned in the affidavit is not to evade due publicity or for any other improper purpose, may in writing authorize the issue of the license or certificate.

Other proofs not dispensed with.

(4) Nothing in the next preceding two subsections shall dispense with the proofs required by subsection 1, except that of residence as set out in clause (c) of that subsection. 3-4 Geo. V. c. 28, s. 2, *part*.

Written consent to be produced and annexed to affidavit.

(5) Where a party who is not a widower or a widow is under the age of eighteen years the written consent of the person whose consent to the marriage is required shall be produced and annexed to the affidavit, and its execution shall be verified by affidavit which shall be made before the issuer or deputy-issuer. 1 Geo. V. c. 32, s. 18 (2).

Prohibited degrees to be set forth in form of affidavit.

20.—(1) Upon the back or at the foot of the printed forms of affidavits to be made by the parties shall be printed a memorandum, Form 5, showing the degrees of affinity and consanguinity which bar or hinder the solemnization of marriage between them; and no affidavit shall be acted upon by the issuer or deputy-issuer which has not such memorandum printed thereon; and upon the back or at the foot of the certificates or licenses issued shall be printed such extracts from this Act as are necessary to show what persons are authorized to solemnize marriage in Ontario, or an epitome of the provisions in reference thereto.

Duty of issuer of licenses.

(2) The issuer or deputy-issuer, before administering the oath, shall see that the applicant is aware what degrees of affinity or consanguinity are a bar to the solemnization of marriage.

Degrees of affinity and consanguinity.

(3) The degrees of affinity and consanguinity within which if persons are related they are prohibited from contracting marriage with each other, as declared in and by the Statute passed in the 28th year of His Majesty King Henry VIII., chapter 7, section 7, as modified by the Revised Statutes of Canada, 1906, chapter 105, are set forth in Schedule A.

28 Hy. VIII. c. 7, s. 7; Rev. Stat. Can. c. 105.

Changes in degrees provided for.

(4) If at any time hereafter changes are made in the law affecting the degrees of relationship within which marriage may not be lawfully contracted, the Lieutenant-Governor in Council may direct such changes to be made in Form 5, so as to make it conformable to the law for the time being. 1 Geo. V. c. 32, s. 19.

LICENSE NOT TO BE ISSUED IN CERTAIN CASES.

21.—(1) Where the person having authority to issue the license or certificate has personal knowledge that the facts are not as required by section 15, he shall not issue the license or certificate; and if he has reason to believe or suspect that the facts are not as so required, he shall, before issuing the license or certificate, require further evidence to his satisfaction in addition to the affidavit prescribed by section 19. 1 Geo. V. c. 32, s. 20; 2 Geo. V. c. 17, s. 30 (3).

When issuer has personal knowledge that proper consent not obtained.

(2) The affidavits and evidence mentioned in subsection 1 shall be endorsed upon or attached to the license or certificate and the consent mentioned in section 15 shall be attached to it. 2 Geo. V. c. 17, s. 30 (4).

Affidavits, etc. to be endorsed upon or attached to license or certificate.

22. Every issuer or deputy-issuer of marriage licenses shall, immediately upon issuing a marriage license or certificate, fill up on a form such of the particulars contained in Form 4 as he is able to give, and shall forward the same forthwith to the Registrar-General. 2 Geo. V. c. 17, s. 30 (5).

Particulars to be sent to Registrar-General.

23. Every issuer of marriage licenses shall, on making application to the Provincial Secretary for a new supply of licenses, certify that a complete return of every license issued by him or his deputy has been forwarded to the Registrar-General. 1 Geo. V. c. 32, s. 21.

Certificate to be given on issuer applying for licenses.

FEES FOR LICENSE.

24. No fee shall be payable for a license or certificate except the sum of \$2, which the issuer of the license or certificate shall be entitled to retain for his own use; but the Lieutenant-Governor in Council may, from time to time, reduce the sum so payable. 1 Geo. V. c. 32, s. 22.

Fees for licenses or certificates.

MARRIAGE OUT OF CHURCH VALID.

25. It shall not be a valid objection to the legality of a marriage that the same was not solemnized in a consecrated church or chapel or within any particular hours. 1 Geo. V. c. 32, s. 23.

Objections on grounds of place or hour of marriage.

MARRIAGE CERTIFICATES.

26. Every clergyman, minister or other person who solemnizes a marriage, and the clerk or secretary of a society of Quakers, or of the meeting at which the marriage is solemnized, shall, at the time of the marriage, if required by either of the parties thereto, give a certificate of the marriage under his hand, specifying the names of the persons married, the time of the marriage, and the names of two or more

Certificate to be given by person solemnizing marriage when required.

persons who witnessed it, and specifying also whether the marriage was solemnized pursuant to license or certificate under this Act, or after proclamation of intention to intermarry; and the clergyman, minister, clerk or secretary may demand twenty-five cents for a certificate given by him from the person requiring it. 1 Geo. V. c. 32, s. 24.

REGISTRATION OF MARRIAGES.

Marriages to be registered by person solemnizing.

27. Every clergyman, minister or other person authorized to solemnize marriage shall, immediately after he has solemnized a marriage, enter in a register to be kept by him for the purpose, unless a similar register is kept in the church at which he officiates, in which case the entries shall be made in that book, the particulars mentioned in Form 4, and shall authenticate the same by his signature. 1 Geo. V. c. 32, s. 25.

Clergyman to apply for marriage register to clerk of municipality.

28.—(1) Every clergyman, minister or other person authorized to solemnize marriage, where a marriage register is not already possessed by any church or congregation over which he is placed or has charge, shall make application for a register to the clerk of the local municipality within which the church or congregation is situate, and the clerk shall thereupon supply such register at the cost of the municipality.

Additional registers.

(2) One additional register may be supplied, at the cost of the municipality, to any clergyman, minister or other person authorized to solemnize marriage, and a register shall also, on application, be supplied at the like cost to any clergyman or minister in the municipality who is not in charge of a church or congregation.

In unorganized townships.

(3) Every clergyman or minister in charge of a church or congregation in an unorganized township shall, upon a written application to be made by him to the Registrar-General, receive a register to be supplied by the Registrar-General. 1 Geo. V. c. 32, s. 26.

(As to returns to be made, see *The Vital Statistics Act, R.S.O. c. 49.*)

Property in registers.

29. The register, by whomsoever furnished, shall be the property of the denomination or body to which the clergyman, minister or other person to whom it is delivered belongs at the time of the delivery thereof, and where he is in charge of a particular congregation of such denomination, it shall belong to the trustees or other body in which the property of the church or meeting house used by such congregation for its ordinary services is vested. 1 Geo. V. c. 32, s. 27.

COPIES OF ACT TO BE SUPPLIED ON REQUEST.

30. Printed copies of this Act shall be furnished in pamphlet form by the clerks of the peace, by mail if desired, post paid, to any person applying therefor upon payment of ten cents for each copy, and the clerks of the peace may obtain from the King's Printer as many copies as they may require at the rate of fifty cents per dozen. 1 Geo. V. c. 32, s. 28.

Printed copies of this Act to be furnished.

CERTAIN MARRIAGES VALIDATED.

31. Any marriages which, before the 1st day of April, 1889, had been solemnized in Ontario by clergymen or ministers duly ordained or appointed as such according to the rites and ceremonies of the churches to which they belong, or by commissioners or staff officers of the Salvation Army, between persons not under any legal disqualification for entering into the contract of matrimony are hereby declared to have been and to be lawful and valid marriages, so far as respects the civil rights in Ontario of the parties or their issue, and so far as respects all matters within the jurisdiction of this Legislature, notwithstanding that the person who solemnized any such marriage was not at the time a resident of Ontario;

Marriages solemnized prior to 1st April, 1889, by persons not resident in Ontario validated.

Provided that the parties thereafter lived together and cohabited as man and wife, and that the validity of the marriage had not, before the said date, been questioned in any suit or action; and Proviso.

Provided, further, that nothing in this section shall make valid any such marriage in case either of the parties thereto has since contracted matrimony according to law; and in such a case the validity of the marriage by a non-resident shall be determined as if this section had not been passed. 1 Geo. V. c. 32, s. 29. Proviso.

32. Any marriages which before the 4th day of May, 1891, had been solemnized in Ontario according to the rites, usages and customs of the religious society called the Society of Friends, commonly called Quakers, between persons not under any legal disqualification for entering into the contract of matrimony, are hereby declared to have been and to be lawful and valid marriages so far as respects the civil rights in Ontario, of the parties, or their issue, and so far as respects all matters within the jurisdiction of this Legislature:

Certain marriages solemnized in Society of Friends before 4th May, 1891.

Provided that the parties thereafter lived together and cohabited as man and wife, and that the validity of the marriage had not been questioned in any suit or action before the tenth day of February, 1891; and Proviso.

Proviso.

Provided, further, that nothing in this section shall make valid any such marriage in case either of the parties thereto had since such marriage, and before the 4th day of May, 1891, contracted matrimony according to law; and in such case the validity of the marriage shall be determined as if this section had not been passed. 1 Geo. V. c. 32, s. 30.

Marriages heretofore solemnized by elders of the Farringdon Independent Church validated.

33. Every marriage solemnized in Ontario before the 26th day of April, 1904, according to the rites, usages and customs of the "Farringdon Independent Church," by an elder thereof, is hereby declared to have been and to be lawful and valid, so far as respects the civil rights in Ontario of the parties and their issue, and so far as respects all matters within the jurisdiction of this Legislature;

Proviso.

Provided that the parties thereafter lived together and cohabited as man and wife, and that the validity of the marriage had not theretofore been questioned in any suit or action; and

Proviso.

Provided, further, that nothing in this section shall make valid any such marriage in case either of the parties thereto had since such marriage and before that date contracted matrimony according to law, and in such case the validity of the marriage shall be determined as if this section had not been passed. 1 Geo. V. c. 32, s. 31.

Certain marriages according to Manitoba law confirmed.

34. Any marriages which, prior to the 1st of January, 1890, were solemnized according to the law of the Province of Manitoba in that portion of the Province of Ontario lying west of the meridian of the confluence of the Ohio and Mississippi Rivers, between persons not under a legal disqualification to contract such marriage, are hereby declared to have been and to be lawful and valid marriages so far as respects the civil rights in Ontario of the parties or their issue, and so far as respects all matters within the jurisdiction of this Legislature;

Proviso.

Provided that the parties thereafter lived together and cohabited as man and wife, and that the validity of the marriage had not theretofore been questioned in any suit or action; and

Proviso.

Provided, further, that nothing in this section shall make valid any such marriage in case either of the parties thereto had since such marriage contracted matrimony according to law and in such case the validity of the marriage shall be determined as if this section had not been enacted; and

Exception as to J. G. Bennett.

Provided, further, that nothing in this section shall validate any marriage or alleged marriage which may have been contracted by one James Gordon Bennett, who died in the City of Winnipeg, in the Province of Manitoba, in the year 1904. 1 Geo. V. c. 32, s. 32.

35. Every marriage heretofore or hereafter solemnized between persons not under a legal disqualification to contract such marriage shall, after three years from the time of the solemnization thereof, or upon the death of either of the parties before the expiry of such time, be deemed a valid marriage so far as respects the civil rights in Ontario of the parties or their issue, and in respect of all matters within the jurisdiction of this Legislature, notwithstanding that the clergyman, minister or other person who solemnized the marriage was not duly authorized to solemnize marriage, and notwithstanding any irregularity or insufficiency in the proclamation of intention to intermarry or in the issue of the license or certificate, or notwithstanding the entire absence of both;

Certain marriages to be deemed valid after three years or on death of one of the parties.

Provided that the parties, after such solemnization, lived together and cohabited as man and wife, and that the validity of the marriage was not before such death or before the expiry of such three years questioned in any suit or action; and

Proviso.

Provided, further, that nothing in this section shall make valid any such marriage in case either of the parties thereto has before the death of the other and before the expiration of such three years contracted matrimony according to law, and in such case the validity of the marriage shall be determined as if this section had not been passed. 1 Geo. V. c. 32, s. 33.

Proviso.

SUPREME COURT MAY DECLARE CERTAIN MARRIAGES INVALID.

36.—(1) Where a form of marriage has been or is gone through between persons either of whom is under the age of 18 years without the consent required by section 15, in the case of a license, or where, without a similar consent in fact, such form of marriage has been or is gone through between such persons after a proclamation of their intention to intermarry, the Supreme Court, notwithstanding that a license or certificate was granted or that such proclamation was made and that the ceremony was performed by a person authorized by law to solemnize marriage, shall have jurisdiction and power in an action brought by either party, who was at the time of the ceremony under the age of 18 years, to declare and adjudge that a valid marriage was not effected or entered into;

Declaration of nullity of marriage.

Provided that such persons have not, after the ceremony, cohabited and lived together as man and wife, and that the action is brought before the person bringing it has attained the age of 19 years.

Proviso.

Saving as to marriages to prevent illegitimacy, etc.

(2) Nothing in this section shall affect the excepted cases mentioned in section 16 or apply where, after the ceremony, there has occurred that which, if a valid marriage had taken place, would have been a consummation thereof.

When Court
not bound to
grant relief.

(3) The Supreme Court shall not be bound to grant relief in the cases provided for by this section where carnal intercourse has taken place between the parties before the ceremony. 1 Geo. V. c. 32, s. 34.

No judgment
by consent
or in default
of appear-
ance or
pleading.

37.—(1) No declaration or adjudication that a valid marriage was not effected or entered into shall in any case be made or pronounced upon consent of parties, admissions, or in default of appearance or of pleading or otherwise than after a trial.

Evidence to
be *viva voce*
in open
court

(2) At every such trial the evidence shall be taken *viva voce* in open court, but nothing in this subsection shall prevent the use of the depositions of witnesses residing out of Ontario or of witnesses examined *de bene esse*, where, according to the practice of the Court, such depositions may be read in evidence.

Court may require examination of parties.

(3) The Court may, of its own motion, require both or either of the parties to be examined before the Court touching the matters in question in the action.

Notice to
Attorney-
General.

(4) No trial shall be had until after ten days' notice to the Attorney General of Ontario.

Who may
intervene at
trial.

(5) The Attorney General may intervene at the trial or at any stage of the proceedings and may adduce evidence, and examine and cross-examine witnesses in like manner as a party defendant, and shall have the same right of appeal from any such declaration or adjudication as a party defendant has. 1 Geo. V. c. 32, s. 35.

FORM 1.

(Section 4.)

CERTIFICATE OF PROCLAMATION OF INTENTION TO INTERMARRY.

I hereby certify that on Sunday, the _____ day of _____, 19____, the intention of A.B., of _____, (state residence) and C.D., of _____ (state residence) to intermarry was duly proclaimed by me in _____ Church, being the church in the _____ (state name of township or other local municipality or parish, circuit or pastoral charge). I further certify that I verily believe the said A.B. (or C.D.) had his (or her) usual place of abode in the said _____ (township or other local municipality or parish, circuit or pastoral charge) for the space of fifteen days immediately preceding the said Sunday.

Dated this day of , 19 .

,Minister of Church.
1 Geo. V. c. 32. Form 1.

FORM 2.

(Section 7.)

CERTIFICATE BEFORE MARRIAGE WITHOUT PROCLAMATION.

These are to certify that *A.B.*, of _____ and *C.D.*, of _____ being minded, as it is said, to enter into the contract of marriage, and being desirous of having the same duly solemnized, the said *A.B.* (or *C.D.*) has made oath, as required by law:—

1. That he (or she) believes that there is no affinity, consanguinity, prior marriage, or any other lawful cause or legal impediment, to bar or hinder the solemnization of the said marriage;

2. That said *A.B.* (or *C.D.* or both, as the case may be), has, (or have) had his (or her, or their) usual place of abode, for the space of fifteen days last past, within the city, (county or district) of _____ namely, in the township (town or village) of _____ in the said county (or district) of _____;

3. That the said *A.B.* and *C.D.* are of the full age of eighteen years;

[Or that *A.B.* or *C.D.* is a widower or widow; or is under the age of eighteen years, and that the consent of *E.D.*, whose consent to said marriage is required by law, has been obtained; or that the father of the said (party under age) is dead, and no guardian of the person of the said (party) has been appointed, and the mother of the said (party) is dead and there is no person having authority to give consent to said marriage (as the case may be);]

These are therefore to certify that the requirements of *The Marriage Act* have been complied with and such marriage may be solemnized in the County of _____ (naming the county or district within which it is intended that the marriage shall be solemnized).

Given under my hand and seal at _____ this _____ day of _____ 19 .
G.H.,

Issuer (or Deputy-issuer) of Licenses.

Issued from the Office of the Provincial Secretary for the Province of Ontario this _____ day of _____ 19 .

K.L.
Provincial Secretary.

1 Geo. V. c. 32, Form 2.

FORM 3.

(Section 19.)

AFFIDAVIT.

I, *A.B.*, of _____, in the county (or district) of _____ (addition)
make oath and say as follows:—

1. I and *C.D.* of _____ in the county (or district) of _____ (addition)
are desirous of entering into the contract of marriage, and of hav-
ing our marriage duly solemnized at the town (or village, etc.) of _____
in the county (or district) of _____

2. According to the best of my knowledge and belief, there is no
affinity, consanguinity, prior marriage or any other lawful cause
or legal impediment to bar or hinder the solemnization of the said
marriage.

3. I (or the said *C.D.* or both, as the case may be) have (or has)
had since the _____ day of _____ 19 _____ my (or his or her or
our) usual place of abode within the municipality of _____ in
the said county (or district).

4. I am of the age of _____ years, and the said *C.D.* is of the full
age of 18 years (or the said *C.D.* is of the age _____ years or over).

5. I am a bachelor (or widower), and the said *C.D.* is a spinster
(or widow).

6. (If either party is under 18 and not a widower or widow, add):
E.D., of _____, in the county of _____ is the person whose
consent to the said marriage is required by law, and the said *E.D.*
consents to the said marriage. The paper writing hereto annexed
marked "A" is the consent of the said *E.D.* to the said marriage,
and the signature thereto is of the proper handwriting of *E.D.*

7. The said *E.D.* is the father of the said *C.D.* [(or the said *E.D.*
is the mother [or guardian duly appointed] of the said *C.D.* and the
father of the said *C.D.* is dead) (or the father and mother of the
said *C.D.* are both dead and no guardian of the said *C.D.* has been
appointed)].

A.B.

Sworn before me, etc.,

G.H.,

Issuer of Licenses.

[NOTE: The form will be varied as the circumstances of the case
may require].

1 Geo. V. c. 32, Form 3.

FORM 4.

(Section 27.)

REGISTER OF MARRIAGES.

BRIDEGROOM.

His name.

Age.

Residence when
married.

Place of birth.

Bachelor or Widower.
(B. or W.)

Occupation.

Religious Denomination
of Bridegroom.

Names of Parents.

BRIDE.

Her name.

Age.

Residence when
married

Place of birth.

Spinster or Widow.
(S. or W.)Religious Denomination
of Bride.

Names of Parents.

Whether Married by Li-
cense or Banns (L. or B.)

SIGNATURES

of Bridegroom

of Bride

of Witnesses,

Residence

Residence

I certify the above named parties were married by me at
 19 , in the County of , this day of

Minister of, etc.

FORM 5.

(Section 20.)

Degrees of affinity and consanguinity which under the statutes in that behalf, bar the lawful solemnization of marriage.

A man may not marry his

1. Grandmother.
2. Grandfather's wife.
3. Wife's grandmother.
4. Aunt.
5. Uncle's wife.
6. Wife's aunt.
7. Mother.
8. Step mother.
9. Wife's mother.
10. Daughter.
11. Wife's daughter.
12. Son's wife.
13. Sister.
14. Granddaughter.
15. Grandson's wife.
16. Wife's granddaughter.
17. Niece.
18. Nephew's wife.
19. Wife's niece.*
20. Brother's wife.

A woman may not marry her

1. Grandfather.
2. Grandmother's husband.
3. Husband's grandfather.
4. Uncle.
5. Aunt's husband.*
6. Husband's uncle.
7. Father.
8. Step father.
9. Husband's father.
10. Son.
11. Husband's son.
12. Daughter's husband.
13. Brother.
14. Grandson.
15. Granddaughter's husband.
16. Husband's grandson.
17. Nephew.
18. Niece's husband.
19. Husband's nephew.
20. Husband's brother.

The relationships set forth in this table include all such relationships whether by the whole or half blood, and whether legitimate or illegitimate.

*By the Revised Statutes of Canada, 1906, c. 105, s. 2, it is enacted that "A marriage is not invalid merely because the woman is a sister of a deceased wife, or a daughter of a sister of a deceased wife of the man."

1 Geo. V. c. 32, Form 5; 2 Geo. V. c. 17, s. 30 (6).

SCHEDULE A.

(Section 20.)

And furthermore since many inconveniences have fallen as well within this Realm as others by reason of marrying within the degrees of marriages prohibited by God's law, that is to say: The son to marry the mother or the step mother carnally known by his father; the brother the sister, the father his son's daughter, or his daughter's daughter, nor shall the son marry the daughter of his father procreate and born by his step mother, nor shall the son marry his aunt, being his father's or mother's sister, nor marry his uncle's wife, carnally known by his uncle, nor shall the father marry his son's wife, carnally known by his son, nor the brother marry his brother's wife carnally known by his brother; nor shall any man married and carnally knowing his wife marry his wife's daughter nor his wife's son's daughter, nor his wife's daughter's daughter . . . And further if it chance any man shall know carnally any woman that then all and singular persons being in any degree of consanguinity or affinity (as is above mentioned) to any of the parties so carnally offending, shall be deemed and adjudged to be within the cases and limits of the said prohibitions of marriage.

1 Geo. V. c. 32, Schedule A.

CHAPTER 149.

An Act respecting the Property of Married Women.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Married Women's Property Act*. 3-4 Geo. V. c. 29, s. 1. Short title.

2. In this Act,

Interpreta-
tion.

(a) "Contract" shall include the acceptance of any trust or of the office of executrix or administratrix; "Contract."

(b) "Property" shall include a thing in action. 3-4 Geo. V. c. 29, s. 2. "Property."

3. The provisions of this Act as to the liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by a married woman who is a trustee or executrix or administratrix, either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. 3-4 Geo. V. c. 29, s. 3. Liabilities.

4.—(1) A married woman shall be capable of acquiring, holding and disposing by will or otherwise of any real or personal property as her separate property in the same manner as if she were a *feme sole* without the intervention of a trustee. Capacity of holding property as a feme sole.

(2) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property, and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise. Power to contract and to sue and be sued.

(3) A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly Married woman as an executrix, administratrix or trustee.

of property subject to any trust, may sue or be sued without her husband as if she were a *feme sole*.

[*See The Married Women's Conveyances Act, Rev. Stat. c. 150, s. 4 (1).*]

Construc-
tion of
contracts
prior to
13th April,
1897.

(4) Every contract entered into by a married woman, prior to the 13th day of April, 1897, shall be deemed to be a contract entered into by her with respect to and to bind her separate property unless the contrary is shown.

To what
extent
binding.

(5) Every contract entered into by a married woman prior to the said 13th day of April, 1897, with respect to and to bind her separate property shall bind, not only the separate property which she was possessed of or entitled to at the date of the contract, but also all separate property which she has since acquired or may hereafter acquire. 3-4 Geo. V. c. 29, s. 4.

Contracts
or after
13th April,
1897.

5.—(1) Every contract entered into by a married woman on or after the 13th day of April, 1897, otherwise than as an agent

Whether
possessed or
not of prop-
erty when
contract
entered into.

(a) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she was or was not in fact possessed of or entitled to any separate property at the time when she entered into such contract;

To what
extent
binding.

(b) shall bind all separate property which she may at the time or thereafter possess or be entitled to; and

Remedies.

(c) shall also be enforceable by process of law against all property which she may thereafter while discreet possess or be entitled to.

Except
where re-
straint on
anticipation
exists. 56-
57 V. (Imp.)
c. 63, s. 1.

(2) Nothing in this section shall render available to satisfy any liability or obligation arising out of such contract any separate property which she is restrained from anticipating. 3-4 Geo. V. c. 29, s. 5.

Rights of
a woman
married on
or before
4th May,
1859.

6.—(1) Every woman married on or before the 4th day of May, 1859, without any marriage contract or settlement shall and may, from and after that day, notwithstanding her coverture, have, hold and enjoy all her real estate/not on or before such day taken possession of by her husband by himself or his tenants, and all her personal property not on or before such day reduced into the possession of her husband, whether belonging to her before marriage or in any way acquired by her after marriage, free from his debts and obligations contracted after such day, and from his control or disposition without her consent in as full and ample a manner as if she were sole and unmarried.

(2) Every woman married between the 5th day of May, 1859, and the 2nd day of March, 1872, both inclusive, without any marriage contract or settlement shall and may, notwithstanding her coverture, have, hold and enjoy all her real property, whether belonging to her before marriage or acquired by her in any way after marriage, free from the debts and obligations of her husband, and free from his control or disposition without her consent, in as full and ample a manner as if she continued sole and unmarried. Rights of a woman married between 4th May, 1859, and 2nd March, 1872, as to realty.

(3) This section shall not extend to any property received by a married woman from her husband during coverture. Exception.

(4) The real estate of any woman married after the 2nd day of March, 1872, whether owned by her at the time of her marriage or acquired by her in any way after marriage, and the rents, issues and profits thereof respectively, shall, without prejudice and subject to the trusts of any settlement affecting the same, be held and enjoyed by her for her separate use, free from any estate therein of her husband during her lifetime, and from his debts and obligations, and from any claim or estate by him, as tenant by the curtesy; and her receipt alone shall be a discharge for any rents, issues and profits of the same; but nothing herein contained shall prejudice the right of the husband as tenant by the curtesy in any real estate of the wife which she has not disposed of *inter vivos* or by will. Rights of a woman married after 2nd March, 1872, as to realty. Curtesy.

(5) Every woman married since the 4th day of May, 1859, without any marriage contract or settlement shall and may, notwithstanding her coverture, have, hold and enjoy all her personal property, whether belonging to her before marriage or acquired by her in any way after marriage, free from the debts and obligations of her husband, and free from his control or disposition without her consent, in as full and ample a manner as if she continued sole and unmarried; but this subsection shall not extend to any property received by a married woman from her husband during coverture. Rights of a woman married since 4th May, 1859, as to personalty. Proviso. 3-4 Geo. V. c. 29, s. 6.

7.—(1) Every married woman, whether married before or after the passing of this Act, shall have and hold as her separate property, and may dispose of as such, the wages, earnings, money and property gained or acquired by her in any employment, trade or occupation in which she is engaged or which she carries on and in which her husband has no proprietary interest, or gained or acquired by her by the exercise of any literary, artistic or scientific skill. Earnings of married women.

(2) Every woman married on or after the first day of July, 1884, shall also be entitled to have and hold and to dispose of as her separate property all other real and personal property belonging to her at the time of marriage or acquired by or devolving upon her after marriage. 3-4 Geo. V. c. 29, s. 7. Rights of a woman married on or after 1st July, 1884.

Property acquired after 1st July, 1884, by a woman married before that date.

8. Every woman married before the first day of July, 1884, shall be entitled to have and hold and to dispose of in manner aforesaid as her separate property all real and personal property her title to which, whether vested or contingent, and whether in possession, reversion or remainder, shall accrue on or after the said first day of July, including any wages, earnings, money and property so gained or acquired by her as aforesaid. 3-4 Geo. V. c. 29, s. 8.

Execution of general power.

9. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities, and such property may be seized and sold under an execution against her personal representative after her separate property has been exhausted. 3-4 Geo. V. c. 29, s. 9.

Power of court to bind interest. Imp. Act 44-45 V. c. 41, s. 39.

10. Notwithstanding that a married woman is restrained from anticipation the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property. 3-4 Geo. V. c. 29, s. 10.

As to stock, etc., to which a married woman is entitled.

11. All deposits, all sums forming part of public stocks or funds, which on the first day of July, 1884, were standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock or other interests of or in any corporation, company or public body, municipal, commercial or otherwise, or of or in any industrial, provident, friendly, benefit, building or loan society which, on the first day of July, 1884, were standing in her name shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, sum forming part of public stocks or funds or of any share, stock, debenture, debenture stock or other interest as aforesaid is standing in the sole name of a married woman shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use so as to authorize and empower her to receive or transfer the same and to receive the dividends, interest, and profits thereof without the concurrence of her husband, and to indemnify all public officers, and all directors, managers and trustees of every such corporation, company, public body or society as aforesaid in respect thereof. 3-4 Geo. V. c. 29, s. 11.

As to stock, etc., transferred, etc., to a married woman.

12.—(1) All such particulars mentioned in the next preceding section which after the first day of July, 1884, were placed or transferred in or into, or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property in respect of which, so far as any liability may be incident thereto, her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded or not.

(2) Nothing in this Act shall require or authorize any corporation or joint stock company to admit any married woman to be a holder of any share or stock therein to which any liability may be incident contrary to the provisions of any statute, charter, by-law, articles of association or deed of settlement regulating such corporation or company. 3-4 Geo. V. c. 39, s. 12.

Subject to
statutory or
other pro-
visions.

13. All the provisions hereinbefore contained as to such particulars mentioned in section 11 which on the first day of July, 1884, were standing in the sole name of a married woman, or which after that time have been or shall be placed or transferred to or into or made to stand in the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title or interest of the married woman, to any of the particulars aforesaid which were standing in or which shall be placed or transferred to or into or made to stand in the name of any married woman jointly with any person or persons other than her husband. 3-4 Geo. V. c. 29, s. 13.

Investments
in joint
names of
married
women and
others.

14. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such particulars named in section 11 which shall be standing in the sole name of any married woman, or in the name of such married woman jointly with any person not being her husband. 3-4 Geo. V. c. 29, s. 14.

When
husband's
concurrence
dispensed
with.

15.—(1) If any investment in any of the particulars set forth in section 11 shall have been made by a married woman by means of money of her husband, without his consent, the Court may, upon an application under section 20 of this Act, order such investment and the dividends thereof, or any part thereof, to be respectively transferred and paid to the husband.

Investments
with money
of husband.

(2) Nothing in this Act shall give validity as against creditors of the husband to any gift by a husband to his wife of any property in fraud of his creditors, or to any deposit or other investment of money of the husband made by or in the name of his wife in fraud of his creditors; but any property or money so deposited or invested may be followed as if this Act had not been passed. 3-4 Geo. V. c. 29, s. 15.

Rights of
creditors
preserved.

16. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same remedies for the protection and security of her own separate property as if such property belonged to her as a *feme sole*, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. 3-4 Geo. V. c. 29, s. 16.

Remedies
of married
women for
protection
and security
of separate
property.
Torts as be-
tween hus-
band and
wife.

Wife's ante-nuptial debts, contracts and torts.

17.—(1) A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted and all contracts entered into or wrongs committed by her before her marriage, and she may be sued for any such debt and for any liability in damages or otherwise under any such contract or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts or wrongs and for all damages or costs recovered in respect thereof.

Saving.

(2) Nothing in this Act shall operate to increase or diminish the liability of any woman married before the first day of July, 1884, for any such debt, contract or wrong. 3-4 Geo. V. c. 29, s. 17.

Liability of husband.

18.—(1) A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, and for wrongs committed by her after marriage, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him and any sums for which judgment may have been *bona fide* recovered against him in any legal proceeding in respect of any such debts, contracts or wrongs, for or in respect of which his wife is liable; but he shall not be liable for the same any further or otherwise.

Court may direct inquiry.

(2) The court in which a husband is sued for any such debt or liability may direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount or value of such property.

Saving.

(3) Nothing in this Act shall operate to increase or diminish the liability of any husband married before the first day of July, 1884, for or in respect of any such debt or other liability of his wife. 3-4 Geo. V. c. 29, s. 18.

Parties to actions.

19.—(1) A husband and wife may be jointly sued in respect of any such debt or other liability, whether for contract or for any wrong contracted or incurred by the wife if the plaintiff in the action seeks to establish his claim either wholly or in part against both of them.

Husband's costs.

(2) If in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled he shall have judgment for his costs of defence whatever may be the result of the action against the wife if sued jointly with him.

(3) In any such action against husband and wife jointly if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages the judgment shall be a separate judgment against the wife as to her separate property only. 3-4 Geo. V. c. 29, s. 19. What judgment may be entered.

20.—(1) In any question between husband and wife as to the title to or possession of property either party or any corporation, company, public body or society in whose books any stocks, funds or shares of either party are standing may apply in a summary way to a Judge of the Supreme Court or at the option of the applicant, irrespectively of the value of the property in dispute, to the Judge of the County or District Court of the county or district in which either party resides; and the Judge may make such order with respect to the property in dispute and as to the costs of and consequent on the application as he thinks fit or may direct such application to stand over from time to time, and any inquiry or issue touching the matters in question to be made or tried in such manner as he shall think fit. Summary disposal of questions between husband and wife as to property.

(2) An order of a Judge of the Supreme Court, made under this section, shall be subject to appeal in the same way as an order made by the same Judge in an action in the said Court. Appeal from Judge of Supreme Court.

(3) An order of a County or District Court, under this section, shall be subject to appeal in the same manner as any other order made by the same Court. Appeal from County Court.

(4) All proceedings in a County or District Court, under this section, in which, by reason of the character or value of the property in dispute, such Court would not have had jurisdiction if this Act had not been passed, may at the option of the defendant or respondent be removed as of right into the Supreme Court, but any order made or act done in the course of the proceedings prior to the removal shall be valid unless an order is made to the contrary by the Supreme Court. Removal of proceedings from County Court into Supreme Court

(5) The Judge of the Supreme Court or County or District Court, if either party so request, may hear any such application in his private room. Hearing.

(6) Any such corporation, company, public body or society shall, in the matter of any such application, for the purposes of costs or otherwise, be treated as a stakeholder only. 3-4 Geo. V. c. 29, s. 20. Corporation's costs.

Saving of
settlements,
and
restraints
against
anticipation.

21. Nothing in this Act shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors. 3-4 Geo. V. c. 29, s. 21.

When married
woman may
obtain an
order of
protection
for the earn-
ings of her
minor
children.

22.—(1) Any married woman

- (a) having a judgment for alimony; or
- (b) who lives apart from her husband, having been obliged to leave him from cruelty or other cause which by law justifies her leaving him and renders him liable for her support; or
- (c) whose husband is a lunatic either with or without lucid intervals; or
- (d) whose husband is undergoing sentence of imprisonment in the Provincial Penitentiary or in any gaol for a criminal offence; or
- (e) whose husband from habitual drunkenness, profligacy or other cause neglects or refuses to provide for her support and that of his family; or
- (f) whose husband has never been in Ontario; or
- (g) who is deserted or abandoned by her husband,

Purport and
effect of
such order.

may obtain an order of protection entitling her, notwithstanding her coverture, to have and to enjoy all the earnings of her minor children, and any acquisitions therefrom, free from the debts and obligations of her husband and from his control or disposition, and without his consent, in as full and ample a manner as if she continued sole and unmarried.

How and by
whom an
order dis-
charging,
protection
may be
obtained.

(2) The married woman may at any time apply, or the husband or any of the husband's creditors may at any time, on notice to the married woman, apply for the discharge of the order of protection; and if an order for such discharge is made the same may be registered or filed in the same manner as the original order.

(3) Either order may issue in duplicate, and where the married woman resides in a city or town in which there is a Police Magistrate the order of protection or any order discharging the same shall be made by the Police Magistrate and shall be registered in the registry office of the registry division in which the city or town is situate.

By whom to be made in cities and towns.

(4) Where the married woman does not reside in a city or town in which there is a Police Magistrate the order shall be made by the Judge or one of the Judges or the acting or Deputy Judge of the Division Courts or a Division Court of the county or district in which the married woman resides; and instead of being registered shall be filed for public inspection with the Clerk of the Division Court of the division within which the married woman resides.

By whom order made elsewhere.

(5) The hearing of an application for an order of protection or for an order discharging the same may be public or private at the discretion of the Judge or Police Magistrate.

Hearing.

(6) The order for protection shall have no effect until it is registered or filed, and the registrar or clerk shall immediately on receiving the order endorse thereon the day of registering or filing the same.

Order not to have effect until registered or filed.

(7) The order discharging an order of protection shall not be retroactive.

Operation of order discharging.

(8) The order of protection shall protect the earnings of the minor children of the married woman until an order is made discharging such order of protection, and the married woman shall continue to hold and enjoy to her separate use whatever, during the interval between the registering or filing of the order of protection and the making of the order discharging the same, she may have acquired by the earnings of her minor children. 3-4 Geo. V. c. 29, s. 22.

From what time order of protection to take effect.

23. For the purposes of this Act the legal personal representative of any married woman shall, in respect of her separate estate, have the same rights and liabilities and be subject to the same jurisdiction as she would have had or been subject to if she were living. 3-4 Geo. V. c. 29, s. 23.

Legal representative of married woman.

24. This Act shall not be construed to deprive a woman, married prior to the commencement of *The Married Women's Property Act, 1884*, of any right or privilege which she had at the time of the commencement of that Act or would afterwards have had if that Act had not been passed. 3-4 Geo. V. c. 29, s. 24.

Married women's rights prior to 1st July, 1884, not affected.

47 V., c. 19.

CHAPTER 150.

An Act to facilitate the Conveyance of Land
by Married Women.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Married Woman's Conveyances Act*. 3-4 Geo. V. c. 30, s. 1.

Interpretation.

2. In this Act

"Judge."

(a) "Judge" shall mean a Judge of the Supreme Court.

"Land."

(b) "Land" shall mean and include land, chattels real, rents and hereditaments, whether corporeal or incorporeal, and any undivided share thereof; any estate, right or interest therein whether legal or equitable; any charge, lien or incumbrance in, upon or affecting land, money subject to be invested in land; and any interest, charge, lien or incumbrance in, upon or affecting such money as aforesaid. 3-4 Geo. V. c. 30, s. 2.

Married woman's power to convey real estate.
Rev. Stat. c. 126.

3. Subject to the provisions of *The Land Titles Act* every married woman, being of the full age of twenty-one years, may execute a certificate of discharge of mortgage of land and may also, by deed, convey her land and convey, release, surrender, disclaim or extinguish any interest therein, and release or extinguish any power vested in, or limited or reserved to her in regard to land, and bar or release her dower, and any right or inchoate right of dower in any land, and appoint an attorney for such purposes or any of them as fully and effectually as she could do if she were a *feme sole*. 3-4 Geo. V. c. 30, s. 3.

Married woman as executrix or trustee.

4.—(1) A married woman who is an executrix or administratrix, alone or jointly with any other person or persons, of the estate of any deceased person, or a trustee alone or jointly of property subject to any trust, may transfer or join in transferring any such particulars as are mentioned in section 11 of *The Married Women's Property Act* without her husband as if she were a *feme sole*.

Rev. Stat. c. 149.

[See *Married Women's Property Act*, R.S.O. c. 149, s. 4 (3).]

(2) Where any freehold hereditament is vested in a married woman as a bare trustee she may convey or surrender the same as if she were a *feme sole*, and without her husband joining in the conveyance. 3-4 Geo. V. c. 30, s. 4.

Bare trustee.

5. Where a conveyance to a purchaser for value purporting to bar or release dower in any land was before the 5th day of May, 1894, executed by a wife entitled to an inchoate right of dower, and such wife was at the time of such execution under age, but the purchaser had at or before the execution of the conveyance and payment of the purchase money no notice that she was under age, the conveyance shall be effectual to bar her dower unless prior to the 1st day of January, 1899, she had brought an action for dower or had given to the owner of the land written notice of her claim to dower by reason of her minority; but nothing in this section shall affect any conveyance which prior to the 31st day of December, 1897, became valid under the Act passed in the fifty-ninth year of the reign of Her late Majesty Queen Victoria intituled *An Act relating to Dower in Certain Cases*. 59 V. c. 40. 3-4 Geo. V. c. 30, s. 5.

Wife purporting to bar dower prior to 5th May, 1894, when under age.

Exception.

6. Subject to the provisions of *The Land Titles Act* a married woman, under twenty-one years of age, of sound mind, might on and since the 5th day of May, 1894, have barred and hereafter may bar her dower in any land by joining with her husband in a deed or conveyance thereof to a purchaser for value, or to a mortgagee, in which deed or conveyance a release or bar of her dower is contained, and she may in like manner release her dower to any person to whom such land has been previously conveyed. 3-4 Geo. V. c. 30, s. 6.

Married women under twenty-one years of age, barring dower. Rev. Stat. c. 126.

7.—(1) Every conveyance before the 29th day of March, 1873, executed by a married woman of or affecting her land, to which her husband was a party, shall be deemed to have been valid and effectual to pass the estate which such conveyance purported to pass of such married woman in the land, notwithstanding

When defective conveyances to be valid.

- (a) the absence or want of a certificate of her consent to convey the same; Absence of certificate.
- (b) any irregularity, informality or defect in the certificate; and Irregularity in certificate.
- (c) that such conveyance was not executed, acknowledged or certified as required by any Act at or before that date in force, or may not have been executed by the married woman in the presence of her husband, or on the same day on which or at the same place at which such conveyance was executed by her husband. Informal conveyance.

Saving as to subsequent conveyances properly executed.

(2) Nothing in this section shall render valid any conveyance to the prejudice of any title subsequently to the execution of such conveyance and before the said date acquired from the married woman by deed executed and certified as by law required, unless the actual possession or enjoyment of the land conveyed or intended to be conveyed by the prior conveyance has been had at any time subsequent thereto by the grantee therein, or those claiming by, from or under him, and he or they have been in such actual possession or enjoyment continuously for the period of three years before the said date, and he or they were at that date in the actual possession or enjoyment thereof.

Exception.

Absence of good faith.

(3) Nothing in this Act shall render valid any conveyance from the married woman which was not executed in good faith, or any conveyance of land of which the married woman or those claiming under her is or are in the actual possession or enjoyment contrary to the terms of such conveyance. 3-4 Geo. V. c. 30, s. 7.

Adverse possession.

Conveyance by married women before 1st July, 1884.

8.—(1) Every conveyance before the 1st July, 1884, executed by a married woman of or affecting her land shall, notwithstanding her husband did not join therein, be deemed to have been valid and effectual to pass the estate which such conveyance purported to pass of such married woman in the land.

Saving as to titles acquired from married women subsequent to such conveyance.

(2) Nothing in this section shall render valid any such conveyance to the prejudice of any title subsequently to the execution of such conveyance and before the 7th day of April, 1896, acquired from the married woman by deed duly executed as by law required, unless the actual possession or enjoyment of the land conveyed or intended to be conveyed by the prior conveyance shall have been had at any time subsequent thereto by the grantee therein or those claiming by, from or under him, and he or they shall have been in such actual possession or enjoyment continuously for the period of three years before that date, and he or they was or were at such date in the actual possession or enjoyment thereof.

Exception.

Absence of good faith.

(3) Nothing in this section shall render valid any conveyance from the married woman which was not executed in good faith, or any conveyance of land of which the married woman or those claiming under her is or are in the actual possession or enjoyment contrary to the terms of such conveyance. 3-4 Geo. V. c. 30, s. 8.

Adverse possession.

Validity of conveyances made since March 29th, 1873.

9.—(1) Every conveyance made on or after the 29th day of March, 1873, by a married woman of or affecting her land which was signed or executed by her husband shall be deemed to be valid and effectual to pass the estate of such married woman in such land which such conveyance purports to pass.

Certain titles not to be prejudiced.

(2) Nothing in this section shall render valid any conveyance to the prejudice of any title lawfully acquired from any married woman prior to the 23rd day of April, 1887, nor

render valid any conveyance from the married woman not executed in good faith or any conveyance of any land of which the married woman or those claiming under her was or were on that day in actual possession or enjoyment contrary to the terms of such conveyance, or affect any action or proceeding then pending.

(3) This section shall not be deemed to declare or imply any construction of any statute passed prior to the 23rd day of April, 1887, as affecting the matters mentioned in this section or any other matters relating to the rights or powers of married women. 3-4 Geo. V. c. 30, s. 9.

Construction of any earlier statute not affected.

10.—(1) Where a husband is entitled to tenancy by the curtesy in the land of his wife, and where a married woman is unable to give a valid deed of her land without her husband joining therein, if the husband is in consequence of being a lunatic, idiot or of unsound mind, and whether so found by inquisition or not, or is from any other cause incapable of executing a deed or conveyance, or if his residence is not known, or he is in prison, or is living apart from his wife by mutual consent or under circumstances which entitle her to alimony, or if he has deserted her, or if there is in the opinion of the Judge any other cause for so doing, a Judge may, by an order to be made by him in a summary way upon the application of the wife upon such evidence as to him seems meet and upon such notice to the husband as he deems requisite, dispense with the execution of the deed or conveyance by or concurrence of the husband therein in any deed or conveyance of the land of his wife and enable the wife effectually to convey such land without such execution by or concurrence of the husband, and free from any estate of the husband by the curtesy.

When conveyance may be made free from curtesy.

(2) All acts or deeds done or executed by the wife in pursuance of such order in regard to her land shall be done, executed, or made by her in the same manner and with the same effect as if she were a *feme sole*, and when so done, executed or made by her shall be as good, valid and effectual as they would have been if the husband had become a party to and executed the same.

Mode of execution by wife.

Effect.

(3) Where the residence of the husband is not known notice to him shall not be necessary.

Dispensing with notice.

(4) Nothing in this section shall be construed as implying that a married woman may not, without and irrespective of the provisions of this section, validly execute any deed, transfer or conveyance of her land, or of any right or interest therein, in all respects as if she were a *feme sole*. 3-4 Geo. V. c. 30, s. 10.

Right of married women to convey not affected.

Form of
order.

11. The order may be in the form following:—

“THE MARRIED WOMAN’S CONVEYANCES ACT.”

Upon application of A.B., of the wife of C.B.,
(or formerly of, etc.) I, one of the Judges of the
Supreme Court (or as the case may be), do, pursuant to
The Married Woman’s Conveyances Act, order that the said A.B.
may, in the same manner, and with the same effect, as if she were
a *feme sole*, and free from any estate of her husband by the curtesy,
grant and convey all or any part of her estate, title and interest
of, in, to or out of all and singular (*describe the premises*).

Dated this day of

A.D.

(Signature of Judge.)

3-4 Geo. V. c. 30, s. 11.

Registra-
tion.

12. The order may be in duplicate or in as many parts as
are necessary and shall be signed by the Judge, and may be
registered in the registry office of the registry division where-
in the land to which the same relates is situate, upon its pro-
duction and deposit, without any proof thereof, and either
before or after the execution of the deed made in pursuance
of such order. 3-4 Geo. V. c. 30, s. 12.

Method.

13. The order may be indorsed or written upon the deed
to which the same relates, in which case it shall be registered
as part of the deed and the land to which the order relates
may be described therein by reference to the description con-
tained in the deed. 3-4 Geo. V. c. 30, s. 13.

Description.

Filing of
papers.

14. The affidavits and papers upon which the order is
obtained shall be filed with the clerk in chambers and shall
be transmitted by him to the Central Office. 3-4 Geo. V.
c. 30, s. 14.

Judge’s fee
for order.

15. For every such order, including every duplicate or
other part thereof, the Judge shall be entitled for his own use
to a fee of \$2; but no other fee or charge shall be payable in
respect thereof except for filing the affidavits and papers
for which the same fees shall be charged, payable in law
stamps, as are chargeable for filing papers in other matters.
3-4 Geo. V. c. 30, s. 15.

Fee for
registration
of order.

16. For the registration of such order, except where it is
written upon and registered as part of the deed, including all
necessary entries and certificates, the registrar shall be en-
titled to a fee of \$1. 3-4 Geo. V. c. 30, s. 16.

CHAPTER 151.

An Act respecting Compensation for Fatal Accidents.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Fatal Accidents Act*. 1 Geo. Short title.
V. c. 33, s. 1.

2. In this Act,

Interpreta-
tion.

(a) "Child" shall include son, daughter, grandson, granddaughter, stepson, stepdaughter, adopted child, and a person to whom the deceased stood *in loco parentis*; "Child."

(b) "Parent" shall include father, mother, grandfather, grandmother, stepfather, stepmother, a person who adopted a child, and a person who stood *in loco parentis* to the deceased. 1 Geo. V. c. 33, s. 2. "Parent."

3. Where the death of a person has been caused by such wrongful act, neglect or default, as, if death had not ensued, would have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under circumstances amounting in law to culpable homicide. 1 Geo. V. c. 33, s. 3. Liability for damages where death caused by wrongful act, neglect, or default.

4.—(1) Every such action shall be for the benefit of the wife, husband, parent and child of the person whose death was so caused, and except as hereinafter provided shall be brought by and in the name of the executor or administrator of the deceased, and in every such action such damages may be awarded as are proportioned to the injury resulting from such death to the persons respectively for whom and for whose benefit such action is brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the beforementioned persons in such shares as may be determined at the trial. For whose benefit and in whose name action to be brought. Apportionment.

(2) In assessing the damages in any action whether commenced before or after the passing of this Act, there shall not be taken into account any sum paid or payable on the death of the deceased or any future premiums payable under any Assessment of damages, insurance premiums.

contract of assurance or insurance made before or after the passing of this Act. 1 Geo. V. c. 33, s. 4.

How money
may be paid
into court.

5. The defendant may pay into court one sum of money as compensation for his wrongful act, neglect or default, to all persons entitled to such compensation without specifying the shares into which it is to be divided. 1 Geo. V. c. 33, s. 5.

One action
only to lie
for the same
cause.

6. Not more than one action shall lie for and in respect of the same subject matter of complaint; and every such action shall be commenced within twelve months after the death of the deceased and not afterwards. 1 Geo. V. c. 33, s. 6.

Limitation.

Particulars of
beneficiaries

7.—(1) The plaintiff shall, in his statement of claim, set forth or deliver therewith full particulars of the persons for whom and on whose behalf the action is brought.

Proof as to
persons
entitled.

(2) There shall be filed with the statement of claim an affidavit by the plaintiff in which he shall state that to the best of his knowledge, information and belief the persons on whose behalf the action is brought as set forth in the statement of claim or the particulars delivered are the only persons entitled or who claim to be entitled to the benefit thereof.

Dispensing
with proof.

(3) The Court in which the action is brought or a Judge thereof, if of opinion that there is a sufficient reason for doing so, may dispense with the filing of the affidavit. 1 Geo. V. c. 33, s. 7.

When action
may be
brought by
persons
beneficially
interested.

8.—(1) If there is no executor or administrator of the deceased, or there being such executor or administrator, no such action is, within six months after the death of the deceased, brought by such executor or administrator, such action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by such executor or administrator.

Regulations
and proced-
ure in such
case.

(2) Every action so brought shall be for the benefit of the same persons, and shall be subject to the same regulations and procedure, as nearly as may be, as if it were brought by such executor or administrator. 1 Geo. V. c. 33, s. 8.

Apportion-
ment.

9. Where the compensation has not been otherwise apportioned a judge in chambers may apportion the same among the persons entitled, and may provide for the costs of the application as he may deem just. 1 Geo. V. c. 33, s. 9.

Where
several
actions
brought by
rival claim-
ants.

10. Where actions are brought by or for the benefit of two or more persons claiming to be entitled, as wife, husband, parent or child of the deceased, the court in which the actions or either of them are pending may make such order as it may deem just for the determination not only of the question of the liability of the defendant, but of all questions as to the persons entitled under the provisions of this Act to the damages, if any, that may be recovered. 1 Geo. V. c. 33, s. 10.

CHAPTER 152.

An Act respecting the Maintenance of Wives deserted by their Husbands.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Deserted Wives' Maintenance Act*. 1 Geo. V. c. 34, s. 1. Short title.

2.—(1) A married woman deserted by her husband may summon him before a police magistrate or two justices of the peace, who, upon proof of service of the summons and whether or not the husband appears, if satisfied that the husband, being able wholly or in part to maintain his wife or his wife and family, has wilfully refused or neglected so to do, and has deserted his wife, may order that the husband shall pay to his wife such weekly sum, not exceeding \$10, with or without costs, as the magistrate or justices may consider proper, having regard to his means and to any means the wife may have, for her support and the support of the family. When order for maintenance may be made.

(2) A married woman shall be deemed to have been deserted within the meaning of this section when she is living apart from her husband because of his acts of cruelty, or of his refusal or neglect without sufficient cause to supply her with food and other necessities when able to do so. 1 Geo. V. c. 34, s. 2. Extension of remedy to certain cases.

3.—(1) In case of non-payment of any sum so ordered, together with costs, for twenty-one days after the order has been made, or such less time as the order provides, and when and so often as the payment so ordered is in arrear such married woman may procure from the magistrate or justices making the order a summons returnable on the tenth day after the service thereof. Proceedings in case of non-payment.

(2) The summons may be served on the husband either personally or in such other manner as the magistrate or justices may in writing direct, and shall require the husband to attend at the time and place mentioned therein to show cause why the order should not be enforced as hereinafter provided. Service of summons.

(3) The applicant and all witnesses whom the magistrate or justices think proper may be examined on oath touching the enquiries to be made on the return of the summons. Witnesses.

Enforcement
of order.

(4) If the husband does not attend as required by the summons, or show a sufficient reason for not attending, or does not satisfy the magistrate or justices that he is unable to pay the sum ordered to be paid, the magistrate or justices may enforce the order by the like proceedings, including imprisonment, as, under *The Ontario Summary Convictions Act*, are applicable in the case of a fine or penalty imposed by a justice of the peace. 1 Geo. V. c. 34, s. 3.

Power to
vary order.

4. The magistrate or justices by whom the order for payment was made, or any other magistrate or justices sitting in his or their stead at his or their request, shall have power, from time to time, to vary the order on the application of either the husband or the wife, upon proof that the means of the husband or wife have been altered in amount since the making of the original order, or any subsequent order varying it. 1 Geo. V. c. 34, s. 4.

Cases of
adultery.

5.—(1) No order shall be made in favour of a wife who is proved to have committed adultery, unless the adultery has been condoned; and any order may be rescinded by the magistrate or justices by whom it was made, or by a magistrate or justices sitting in his or their stead at his or their request, upon proof that the wife since the making thereof has been guilty of adultery if it has not been condoned.

Effect of
finding as to
adultery.

(2) A finding by the magistrate or justices that adultery has been proved shall not be evidence of the adultery except for the purpose of proceedings under this Act. 1 Geo. V. c. 34, s. 5.

Hearing of
complaint.

6. Cases arising under this Act may, in the discretion of the magistrate or justices, be heard in private. 1 Geo. V. c. 34, s. 6.

Application
for and ser-
vice of
summons.

7. A summons under this Act shall be applied for, granted, and served in the same manner as a summons in a case of assault, or in such other manner as the magistrate or justices direct; and the magistrate or justices, or other magistrate or justices sitting in his or their stead at his or their request, may at any time rehear the application at the instance of the husband after notice to the wife, and may confirm, rescind or vary any order made thereon as he or they may deem just. 1 Geo. V. c. 34, s. 7.

Signing
summons.

8. Where any matter is to be heard by two justices the summons may be signed by one of them. 1 Geo. V. c. 34, s. 8.

Forms.

9. Orders and summonses may be according to the forms in the Schedule to this Act. 1 Geo. V. c. 34, s. 9.

Provision as
to costs and
appeal.

10. The costs of proceedings under this Act shall be the same as are provided for by *The Ontario Summary Convic-*

tions Act, and the provisions of that Act, as to appeals, Rev. Stat. c. 90
and the proceedings therein and incidental thereto, shall
apply to any order made under the provisions of this
Act except that where the husband is the appellant he shall
pay all costs. 1 Geo. V. c. 34, s. 10.

SCHEDULE.

SUMMONS.

County (or District) } To A. B., of
of }

Whereas application has this day been made by your wife, C. B.,
to the undersigned Police Magistrate (or Justice of the Peace as
the case may be) for
for a summons under *The Deserted Wives' Maintenance Act*, for that
you have wilfully refused or neglected to maintain your said wife
(or your wife and family as *the case may be*), and have deserted
your said wife. These are, therefore, to command you to appear
before the undersigned, or such Police Magistrate or Justices as may
then and there be present in my (or our) stead at

on the _____ day after the service hereof,
at the hour of _____ in the _____ noon, to shew cause why an order
should not be made against you, to pay to your said wife for her
support (or for the support of her and your family, as *the case may*
be) such weekly sum not exceeding \$10 as may be considered to be
in accordance with your means and with the means of your said
wife.

Given under _____ hand and seal _____ day of _____ 19 _____.
J. S. [L.S.]

ORDER.

County (or District) }
of }

Upon reading the summons dated the _____ day of _____ 19 ____ ,
issued by _____ Police Magistrate for the
(or Justices of the Peace for _____) upon the application of
C. B., wife of A. B., under the provisions of *The Deserted Wives'*
Maintenance Act, and upon hearing all the parties (or as *the case*
may be) and the evidence adduced, and it appearing that the said
C. B. is entitled to the benefit of the said Act; I (or we) the under-
signed, do hereby order that the said A. B. do pay hereafter to his
said wife, or her agent authorized in writing, at

the sum of \$ _____ per week for her support
(or for the support of her and the family of the said A. B.), the first
weekly payment to be made on the _____ day of _____ 19 ____ , together
with the costs of these proceedings, which amount to \$ _____ which
shall be paid on or before the _____ day of _____ 19 ____ .

Given under _____ hand and seal this _____ day of _____ 19 ____ .
J. S. [L.S.]

SUMMONS AFTER DEFAULT.

County (or District) } To A. B., of
of }

Whereas under and by virtue of the provisions of *The Deserted Wives' Maintenance Act*, by order dated the _____ day of _____ 19____, made by _____, Police Magistrate for _____ (or by _____ and _____ two Justices of the Peace for _____) you were ordered to pay to your wife C. B. \$ _____ per week, together with costs, amounting to \$ _____; and whereas it is alleged by the said C. B. that you have made default in payment of said sum and costs, and that there is now due and owing, by virtue of the said order, \$ _____, You are therefore hereby summoned to appear before me (or us) or such other Police Magistrate (or Justice of the Peace), acting in my (or our) stead as may then and there be present at _____ at the hour of _____ o'clock in the _____ noon, on the tenth day after service hereof, to show cause why proceedings for enforcing the said order should not be had against you under the said Act.

Given under _____ hand and seal this _____ day of _____ 19____.

J. S. [L.S.]

1 Geo. V. c. 34, Schedule.

2. PARENT AND CHILD.

CHAPTER 153.

An Act respecting Infants.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Infants Act*. 1 Geo. V. Short title. c. 35, s. 1.

CUSTODY OF INFANTS.

2.—(1) The Supreme Court or the Surrogate Court, upon the application of the mother of an infant, who may apply without a next friend, may make such order as the court sees fit regarding the custody of the infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary or discharge the order on the application of either parent, or, after the death of either parent, of any guardian appointed under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for the same, or otherwise, as the court may deem just.

Order as to custody of and right of access to infant, at the instance of mother.

(2) The court may also make an order for the maintenance of the infant by payment by the father, or out of any estate to which the infant is entitled, of such sum from time to time as, according to the pecuniary circumstances of the father or the value of the estate, the court deems reasonable.

Order as to maintenance.

(3) No order directing that the mother shall have the custody of or access to an infant shall be made in favour of a mother against whom adultery has been established by judgment in an action for criminal conversation or for alimony.

Where mother guilty of adultery.

1 Geo. V. c. 35, s. 2.

3.—(1) The father of a child under the age of twenty-one years, whether born at the time of the decease of the father or at the time *en ventre sa mere*, by deed or by his last will and testament in such manner and from time to time as he shall think fit, may dispose of the custody and education of such child, while he remains under the age of twenty-one

Custody and education of children during minority

years or for any lesser time, to any person in possession or remainder.

Against whom
disposition to
be effectual.

(2) Such disposition shall be good and effectual against every person claiming the custody or education of such child as guardian in socage or otherwise.

Action for
detention of
ward.

(3) The person to whom the custody of such child is so committed may maintain an action against any person who wrongfully takes away or detains him for the recovery of such child and for damages for such taking away or detention for the use and benefit of the child. 1 Geo. V. c. 35, s. 3.

Imp. 12 Car.
2, c. 24, s. 8.

Rules of equity.

4. In questions relating to the custody and education of infants the rules of equity shall prevail. 1 Geo. V. c. 35, s. 4.

INFANT'S REAL ESTATE.

When sale or
lease of infant's
estate may be
authorized.

5.—(1) Where an infant is seised, possessed of or entitled to any real estate in fee or for a term of years, or otherwise, and the Supreme Court is of opinion that a sale, mortgage, lease or other disposition of the same, or of a part thereof, or of any timber, not being ornamental, growing thereon, is necessary or proper for the maintenance or education of the infant, or that for any cause his interest requires or will be substantially promoted by such disposition, the court may order the sale, mortgage, or the letting for a term of years, or other disposition of such real estate, or any part thereof, to be made under the direction of the court or of one of its officers, or by the guardian of the infant, or by a person appointed for the purpose, in such manner and with such restrictions as may be deemed expedient, and may order the infant to convey the estate. 1 Geo. V. c. 35, s. 5 (1); 2 Geo. V. c. 17, s. 31 (2); 3-4 Geo. V. c. 18, s. 29 (1).

Exception,

(2) No sale, mortgage, lease, or other disposition shall be made contrary to the provisions of a will or conveyance by which the estate has been devised or granted to the infant or for his use. 1 Geo. V. c. 35, s. 5 (2); 3-4 Geo. V. c. 18, s. 29 (2).

Application by
guardian and
order for
surrender and
renewal of
lease.
11 Geo. IV. & 1
Win. IV. (Imp.)
c. 65, s. 12.

6. Where any person, under the age of twenty-one years, is entitled to any lease made or granted for the life or lives of one or more persons, or for any term of years either absolute, or determinable on the death of one or more persons, or otherwise, such person, or his guardian, or other person on his behalf, may apply to the Supreme Court; and, by the order and direction of the Court, such infant, or his guardian, or any person appointed in the place of such infant by the Court, may be enabled from time to time, by deed, to surrender such lease, and accept and take, in the place, and for the benefit, of such person under the age of twenty-one years, a new lease of the premises comprised in such surrendered lease, for and during such number of lives, or for such term

or terms of years determinable upon such number of lives, or for such term or terms of years absolute, as was, or were, mentioned or contained, in the lease so surrendered at the making thereof, or otherwise as the Court shall direct. R.S.O. 1897, c. 340, s. 4.

7. Every sum of money and other consideration, paid by a guardian, or other person, as a fine, premium, or income, or in the nature of a fine, premium, or income, for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the Court shall direct. R.S.O. 1897, c. 340, s. 5.

Charges attending renewal.
11 Geo. IV. & 1 Wm. IV. c. 65, s. 14.

8. Every lease so renewed shall operate, and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devices and conditions, as the surrendered lease was or would have been subject to if such surrender had not been made. R.S.O. 1897, c. 340, s. 6.

New leases shall be to the same uses.
Imp. Act, s. 15

9. Where any person, under the age of twenty-one years, might, in pursuance of any covenant or agreement, if not under disability, be compelled to renew any lease made for the life or lives of one or more person or persons, or for any term or number of years absolute, or determinable on the death of one or more persons, such infant, or his guardian in the name of such infant, by the direction of the Supreme Court, to be signified by an order made upon the application of such infant, or his guardian, or of any person entitled to such renewal, from time to time, may accept of a surrender of such lease, and may make and execute a new lease of the premises comprised in such lease, for and during such number of lives, or for such term or terms determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned in the lease so surrendered at the making thereof, or otherwise as the Court by such order shall direct. R.S.O. 1897, c. 340, s. 7.

Infants empowered to grant renewals of leases.
11 Geo. IV. & 1 Wm. IV. (Imp.) c. 65, s. 16.

10. No renewed lease shall be executed by virtue of this Act, in pursuance of any covenant or agreement, unless the fine, if any, or such other sum of money, if any, as ought to be paid on such renewal, and such things, if any, as ought to be performed in pursuance of such covenant or agreement by the lessee or tenant, be first paid, and performed, and counterparts of every renewed lease shall be duly executed by the lessee. R.S.O. 1897, c. 340, s. 9.

Fines to be paid before renewals and counterparts, are executed.
11 Geo. IV. & 1 Wm. IV. (Imp.) c. 65 s. 20.

11. All fines, premiums, and sums of money, had, received, or paid, for or on account of the renewal of any lease, by or on behalf of an infant, after a deduction of all necessary incidental charges and expenses, shall be paid to his guardian, and be applied and disposed of for the benefit of such infant,

Fines, how to be applied.
11 Geo. IV. & 1 Wm. IV. (Imp.) c. 65, s. 21.

in such manner as the Court shall direct. R.S.O. 1897, c. 340, s. 10.

Validity of
dispositions
under act.
11 Geo. IV. and
1 Wm. IV.
c. 65, s. 31.

12. Every surrender and lease made or accepted by virtue of this Act shall be deemed to be as valid and effectual as if the person by whom or in whose place the same was made or accepted had been of full age and had made or accepted the same. R.S.O. 1897, c. 340, s. 11.

Who may
apply.

13. The application shall be in the name of the infant by his next friend, or guardian; but shall not be made without the consent of the infant if he is of the age of fourteen years or upwards unless the Court otherwise directs or allows. 1 Geo. V. c. 35, s. 6.

Infant's
consent.

When a sub-
stitute may
be appointed
to convey.

14. Where it is deemed convenient the Court may direct some other person in the place of the infant to convey the estate. 1 Geo. V. c. 35, s. 7.

Validity of
such con-
veyance.

15. Every such conveyance, whether executed by the infant or by a person appointed to execute the same in his place, shall be as effectual as if the infant had executed the same, and had been of the age of twenty-one years at the time. 1 Geo. V. c. 35, s. 8.

Application of
proceeds.

16. The money arising from such sale, lease or other disposition shall be laid out, applied and disposed of in such manner as the court directs. 1 Geo. V. c. 35, s. 9.

Character of
surplus
money.

17. On any sale or other disposition so made the money raised, or the surplus thereof, shall be of the same nature and character as the estate sold or disposed of; and the heirs, next of kin, or other representatives of the infants shall have the like interest in any surplus which may remain at the decease of the infant as they would have had in the estate sold or disposed of if no such sale or other disposition had been made. 1 Geo. V. c. 35, s. 10.

Consent to
assignment
of lease
by infant.

18. Where an infant is seized of the reversion of land subject to a lease, and such lease contains a covenant not to assign or sublet without leave, the guardian of such infant may, with the the approbation of the Judge of the Surrogate Court of the county or district in which the land, or any part of it, is situate, consent to any assignment or transfer of such leasehold interest in the same manner and with the like effect as if the consent were given by a lessor under no such disability. 1 Geo. V. c. 35, s. 11.

Compensation
to owners of
particular
estates.

19. If any real estate of an infant is subject to dower, and the person entitled to dower consents in writing to accept in lieu of dower a gross sum which the court deems reasonable, or the permanent investment of a reasonable sum in such manner that the interest thereof be made payable to

the person entitled to dower during her life, the court may direct the payment of such sum in gross out of the purchase money to the person entitled to dower, as upon the principles applicable to life annuities may be deemed a reasonable satisfaction for such dower; or may direct the payment to the person entitled to dower of an annual sum or of the income or interest to be derived from the purchase money, or any part thereof, as may seem just, and for that purpose may make such order for the investment or other disposition of the purchase money, or any part thereof, as may be necessary 1 Geo. V. c. 35, s. 12.

(As to conveyance by infants where land is sold by direction of the court for payment of debts of ancestor, see *The Trustee Act, R.S.O. c. 121.*)

20.—(1) Where, by a will or other instrument, property is given beneficially to any person for his life with a power of devising or appointing the same by will in favour of his children, or of one or more of them, the Supreme Court may, on the application, or with the consent of the tenant for life, order that such portion of the proceeds of the property, as it may deem proper, shall be applied towards the maintenance or education of any infant child in whose favour the power might be exercised, notwithstanding that there is a gift over in the event of there being no children to take under the power, or that there is a right conferred upon the tenant for life or upon some other person in such event to make a disposition of the property in favour of some person other than such children.

Order for maintenance where power of appointment in favour of children.

(2) This section shall extend to property coming within its terms where the will or other instrument under which it is held has gone into operation or has been executed before the 5th day of May, 1894. 1 Geo. V. c. 35, s. 13.

Application of section.

21.—(1) The Supreme Court by an order to be made on the application of the guardian of an infant in whose name any stock or money, by virtue of any statute for paying off any stock, is standing and who is beneficially entitled thereto, or if there is no guardian, by an order to be made in any action, cause or matter depending in the Court, may direct all or any part of the dividends in respect of such stock or any such money to be paid to the guardian of such infant or to any other person for the maintenance and education or otherwise for the benefit of the infant.

Order for application of dividends of stock for maintenance of infants.

Imp. Act 11 Geo. IV. and 1 Wm. IV. c. 65, s. 32.

(2) Such guardian, or other person to whom payment is directed to be made, shall be named in the order and his receipt therefor shall be as effectual as if the infant had attained the age of twenty-one years and had signed and given the same.

Effect of receipt.

Costs.

Imp. Act 11
Geo. IV. and
1 Wm. IV.
c. 65, s. 35.

(3) The Court may order the costs and expenses of and relating to the application to be paid and raised out of, or from, the stock or dividends in respect of which the same is made in such manner as the Court deems proper.

Indemnity to
banks, etc.

Imp. Act 11
Geo. IV. and
1 Wm. IV.
c. 65, s. 44.

(4) This section shall be a full and complete indemnity and discharge to all banks, companies and societies and their officers and servants for all acts and things done, or permitted to be done, pursuant thereto. 1 Geo. V. c. 35, s. 14.

MARRIAGE SETTLEMENTS OF INFANTS.

Power of
infant

with the ap-
probation of
the Court
make valid
marriage
settlement.

Imp. Act 18
and 19 Vict.
c. 43, s. 1.

22.—(1) Every infant upon or in contemplation of his marriage, with the sanction of the Supreme Court, may make a valid and binding settlement or contract for a settlement of all or any part of his property, or property over which he has a power of appointment, whether real or personal and whether in possession, reversion, remainder or expectancy; and every conveyance, appointment and assignment of such property, or contract to make a conveyance, appointment or assignment thereof, executed by such infant with the approbation of the Court for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years.

Exception.

(2) This section shall not extend to a power which it is expressly declared shall not be exercised by an infant. 1 Geo. V. c. 35, s. 15.

If infant dies
under age,
appointment
or disentailing
deed to be
void.

Imp. Act 18
and 19 Vict.
c. 43, s. 2.

23. Where an appointment, under a power of appointment, or a disentailing assurance has been executed by an infant tenant in tail, under the provisions of the next preceding section, and the infant afterwards dies under age such appointment or disentailing assurance shall thereupon become absolutely void. 1 Geo. V. c. 35, s. 16.

How sanction
of the
Court to be
given.

Imp. Act 18
and 19 Vict.
c. 43, s. 3.

24. The sanction of the Court to any such settlement or contract for a settlement may be given upon the application of the infant or his guardian without the institution of an action; and, if there is no guardian, the Court may require a guardian to be appointed if it shall think fit, and the Court may also require that any person interested or appearing to be interested in the property shall be served with notice of the application. 1 Geo. V. c. 35, s. 17.

Case of
males under
20 or females
under 17.
Imp. Act 18
and 19 Vict.
c. 48, s. 4.

25. Nothing in the three next preceding sections shall apply to a male infant under the age of twenty years or to a female infant under the age of seventeen years. 1 Geo. V. c. 35, s. 18.

GUARDIANS.

Appointment
of guardians by
Surrogate
Court.

26.—(1) The Surrogate Court may appoint the father of the infant or may, with the consent of the father, appoint some other suitable person or persons to be the guardian or

guardians of the infant, but if the infant is of the age of fourteen years no such appointment shall be made without his consent. When infant's consent necessary.

(2) If the infant has no father living or any guardian authorized by law to take the care of his person and the charge of his estate, if any, or if he is of the age of fourteen years and does not give the consent mentioned in the next preceding subsection, upon the written application of the infant, or of any friend of the infant residing within the jurisdiction of the Surrogate Court to which the application is made, and after proof of twenty days' public notice of the application in some newspaper published within the county or district to the Surrogate Court of which the application is made, the Court may appoint some suitable and discreet person or persons to be guardian or guardians of the infant, whether the infant is or is not entitled to any property. Where no father or authorized guardian or infant does not consent

(3) Letters of guardianship granted by a Surrogate Court shall have force and effect in all parts of Ontario; and an official certificate of the grant may be obtained as in the case of letters of administration. Letters of guardianship to have effect throughout Ontario. 1 Geo. V. c. 35, s. 19.

27. Subject to the provisions of *The Guarantee Companies Securities Act* and of *The Ontario Companies Act* the Court shall take from every guardian, appointed under section 26, a bond in the name of the infant, in such penal sum and with such sureties as the Judge approves, conditioned that the guardian will faithfully perform his trust, and that he, or his executors or administrators, will, when the infant becomes of the full age of twenty-one years, or whenever the guardianship is determined, or sooner if thereto required by law, render a true and just account of all goods, money, interest, rents, profits or other estate of the infant, which shall have come into the hands of the guardian, and will thereupon without delay deliver and pay over to the infant, or to his executors or administrators, the estate or the sum which may be in the hands of the guardian belonging to the infant, deducting therefrom and retaining a reasonable sum for the expenses and charges of the guardian; and the bond shall be recorded by the registrar of the Court in the books of his office. Security by the guardian. Rev. Stat. c. 190. Rev. Stat. c. 173. Condition of bond. 1 Geo. V. c. 35, s. 20.

28.—(1) On the death of the father of an infant the mother, if surviving, shall be the guardian of the infant, either alone, when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When mother to be guardian alone, or jointly.

(2) Where no guardian has been appointed by the father, or if the guardian appointed by the father is dead, or refuses to act, the Supreme Court or the Surrogate Court may from time to time appoint a guardian or guardians to act jointly with the mother. When court may appoint guardian.

When mother
may appoint
guardian.

(3) The mother of an infant may, by deed or will, appoint any person or persons to be guardian or guardians of the infant after the death of herself and the father of the infant, if the infant be then unmarried; and where guardians are appointed by both parents they shall act jointly.

Provisional
appointment
by mother.

(4) The mother of an infant may, by deed or will, provisionally nominate some fit person or persons to act as guardian or guardians of the infant after her death jointly with the father of the infant, and the Court after her death, if it be shown that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be empowered to act, or may make such other order in respect of the guardianship as may be deemed just.

Direction by
court on
matters affect-
ing infant.

(5) In the event of guardians being unable to agree among themselves, or with the father, upon a question affecting the welfare of an infant any of them, or the father, may apply to such Court for its direction, and the Court may make such order as may be deemed just. 1 Geo. V. c. 35, s. 21.

[As to appointment of trust company as guardian, see *The Loan and Trust Corporations Act. R.S.O. c. 184.*]

Removal of
guardians.

29.—(1) Testamentary guardians and guardians appointed or constituted by virtue of this Act shall be removable by the Supreme Court, or by the Surrogate Court for the same causes for which trustees are removable.

Resignation of
office by
guardian.

(2) Any such guardian may, by leave of the Court, resign his office upon such terms and conditions as may be deemed just. 1 Geo. V. c. 35, s. 22.

Returns
respecting
guardians to
Surrogate
Court.
Rev. Stat. c. 62.

30. A return of every appointment and removal or resignation of a guardian shall be made by the Registrar of the Court to the Surrogate Clerk in like manner as is required by *The Surrogate Courts Act* in the case of grants of probate or administration. 1 Geo. V. c. 35, s. 23.

What Surro-
gate Court or
Judge to act.

31.—(1) The Surrogate Court, referred to in sections 2 and 26 to 28, is the Surrogate Court of the county or district in which the infants or any or either of them reside.

Exercise of
powers by
judge in
chambers.

(2) The powers conferred by this Act on the Supreme Court may be exercised by a Judge thereof in Chambers. 1 Geo. V. c. 35, s. 24.

AUTHORITY OF GUARDIANS.

Guardian's
authority.

32. Unless where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited the guardian so appointed or constituted during the continuance of his guardianship,

- (a) shall have authority to act for and on behalf of the infant; To act for ward.
- (b) may appear in any court and prosecute or defend any action or proceeding in his name; To appear in actions.
- (c) shall have the charge and management of his estate, real and personal, and the custody of his person and the care of his education; and To manage real and personal estate, etc.
- (d) shall have authority to apprentice the infant in accordance with the provisions of *The Apprentices and Minors Act*. 1 Geo. V. c. 35, s. 25. To apprentice wards. Rev. Stat. c. 147.

PRACTICE IN AND APPEALS FROM SURROGATE COURTS.

33. An appeal shall lie from an order or judgment of a Surrogate Court under this Act to a Divisional Court, and the practice and procedure shall be the same as in the case of an appeal under *The Surrogate Courts Act*. 1 Geo. V. c. 35, s. 26. Appeal from order or judgment of Surrogate Court. Rev. Stat. c. 62.

34. The practice and procedure under *The Surrogate Courts Act* and Rules shall apply to proceedings in the Surrogate Court under this Act, and the power to make rules under that Act shall apply to proceedings under this Act. 1 Geo. V. c. 35, s. 27 (1). Practice and procedure. Rev. Stat. c. 62.

GENERAL PROVISIONS.

35. Nothing in this Act shall deprive the Supreme Court of jurisdiction in matters provided for by this Act. 1 Geo. V. c. 35, s. 28. Jurisdiction of Supreme Court not affected.

36. Nothing in this Act shall change the law as to the authority of the father in respect of the religious faith in which his child is to be educated. 1 Geo. V. c. 35, s. 29. Religious education of infant.

CHAPTER 154.

An Act respecting the Support of Illegitimate Children.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Illegitimate Children's Act*. 1 Geo. V. c. 36, s. 1.

Liability of father for necessities supplied to illegitimate child.

2.—(1) Any person who furnishes food, clothing, lodging or other necessities to any child born out of lawful wedlock may maintain an action for the value thereof against the father of the child, if the child was a minor at the time the necessities were furnished, and was not then residing with and maintained by his reputed father as a member of his family.

When corroborative evidence requisite.

(2) Where the person suing for the value of the necessities is the mother of the child, or a person to whom the mother has become accountable for the necessities, the plaintiff shall not be entitled to recover unless the fact of the defendant being the father is proved by other testimony than that of the mother, or her testimony is corroborated by some other material evidence of that fact. 1 Geo. V. c. 36, s. 2.

On what conditions action maintainable.

3. No action shall be sustained under the next preceding section unless it is shown upon the trial thereof that while the mother of the child was pregnant with, or within six months after the birth of the child, she had voluntarily made an affidavit before a justice of the peace for the county, district or city in which she then resided declaring that the person afterwards charged in the action is really the father of the child, nor unless such affidavit was deposited, within that time, in the office of the clerk of the peace of the county or district, or of the clerk of the council of the city. 1 Geo. V. c. 36, s. 3.

Affidavit of paternity.

Effect of affidavit.

4. The affidavit shall not be evidence of the fact of the defendant being the father of the child. 1 Geo. V. c. 36, s. 4.

Reservation of other remedies.

5. This Act shall not take away or abridge any right of action or remedy which, without this Act, might have been maintained against the father of an illegitimate child. 1 Geo. V. c. 36, s. 5.

3, LANDLORD AND TENANT.

CHAPTER 155.

An Act respecting the Law of Landlord and Tenant.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Landlord and Tenant Act*. Short title.
1 Geo. V. c. 37, s. 1.

INTERPRETATION.

2. In this Act,

Interpreta-
tion.

- (a) "Crops" shall mean and include all sorts of grain, grass, hay, hops, fruits, pulse and other products of the soil; "Crops."
- (b) "Landlord" shall mean and include lessor, owner, the person giving or permitting the occupation of the premises in question and his and their heirs and assigns and legal representatives, and in Parts II. and III. shall also include the person entitled to the possession of the premises; "Landlord."
- (c) "Standing crops" shall mean crops standing or growing on the demised premises; "Standing crops."
- (d) "Tenant" shall mean and include lessee, occupant, sub-tenant, under-tenant, and his or their assigns and legal representatives. 1 Geo. V. c. 37, s. 2. "Tenant."

PART I.

RELATION OF LANDLORD AND TENANT.

3. The relation of landlord and tenant shall not depend on tenure, and a reversion in the lessor shall not be necessary in order to create the relation of landlord and tenant, or to make applicable the incidents by law belonging to that relation; nor shall it be necessary in order to give a landlord the right of distress that there shall be an agreement for that purpose between the parties. 1 Geo. V. c. 37, s. 3. Relation of landlord and tenant.

COVENANTS RUNNING WITH REVERSION, ETC.

Remedies
available to
assignees of
reversion.

32 Hen.
VIII. c. 34,
s. 1.

4. All persons being grantees or assignees of the King, or of any other person than the King, and the heirs, executors, successors and assigns of every of them, shall have and enjoy like advantage against the lessees, their executors, administrators, and assigns, by entry for non-payment of the rent, or for doing of waste, or other forfeiture, and also shall have and enjoy all and every such like and the same advantage, benefit, and remedies, by action only, for not performing of other conditions, covenants, or agreements, contained and expressed in the indentures of their said leases, demises or grants against all and every of the said lessees, and fermors, and grantees, their executors, administrators, and assigns as the said lessors or grantors themselves, or their heirs or successors, might have had and enjoyed at any time or times. 1 Geo. V. c. 37, s. 4.

Lessee's cov-
enant to run
with rever-
sion.

mp. Act
44-45 Vic.
c. 41, s. 10.

5. Rent reserved by a lease and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by any person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased. 1 Geo. V. c. 37, s. 5.

Action
of covenant,
etc., against
assigns of
grantors
and lessors.

32 Hen.
VIII. c. 34,
s. 2.

6. All fermors, lessees and grantees of lands, tenements, rents, portions, or any other hereditaments for term of years, life or lives, their executors, administrators, and assigns shall and may have like action, advantage, and remedy against all and every person who shall have any gift or grant of the King, or of any other persons, of the reversion of the same lands, tenements and other hereditaments so let, or any parcel thereof, for any condition, covenant, or agreement, contained or expressed in the indentures of their leases as the same lessees or any of them, might and should have had against their said lessors, and grantors, their heirs, or successors. 1 Geo. V. c. 37, s. 6.

Lessor's cov-
enants to run
with rever-
sion.

Imp. Act
44-45 Vic.
c. 41, s. 11.

7. The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise;

and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, such obligation may be taken advantage of and enforced against any person so entitled. 1 Geo. V. c. 37, s. 7.

APPORTIONMENT OF CONDITION OF RE-ENTRY.

8. Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease. 1 Geo. V. c. 37, s. 8.

Apportionment of conditions on severance, etc.
Imp. Act 44-45 Vic. c. 41, s. 12.

9. Sections 5 and 7 and section 8, so far as it is applicable to leases not made by deed, shall apply only to leases made after the 24th day of March, 1911. 1 Geo. V. c. 37, s. 9.

Application of ss. 4, 7 and 8.

SUB-LESSEE NOT TO HAVE RIGHT TO CALL FOR TITLE.

10.—(1) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

On sub-demise title to leasehold reversion not to be required.

(2) This section applies only if and as far as the contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

Imp. Act 44-45 Vic. c. 41, s. 13.
Saving.

(3) This section shall apply only to contracts made after the 24th day of March, 1911. 1 Geo. V. c. 37, s. 10.

Application of section.

DEFECTS IN LEASES MADE UNDER POWERS OF LEASING.

11. Where, in the intended exercise of any power of leasing, whether derived under a statute or under any instrument lawfully creating such power, a lease has been, or shall hereafter be, granted which is, by reason of the non-observance or omission of some condition or restriction, or by reason of any other deviation from the terms of such power, invalid as against the person entitled, after the determination of the interest of the person granting such lease, to the reversion, or against other the person who, subject to any lease lawfully granted under

Effect of lease where there is a deviation from terms of the power to demise.

Imp. Act 12-13
Vic. c. 26,
s. 2.

such power, would have been entitled to the land comprised in such lease, such lease, in case the same was made in good faith and the lessee named therein, his heirs, executors, administrators, or assigns have entered thereunder, shall be considered a contract for a grant at the request of the lessee, his heirs, executors, administrators, or assigns of a valid lease under such power, to the like purport and effect as such invalid lease, save so far as any variation may be necessary in order to comply with the terms of such power; and all persons who would have been bound by a lease lawfully granted under such power shall be bound by such contract; but no lessee under any such invalid lease, his heirs, executors, administrators, or assigns, shall be entitled by virtue of any such contract to obtain any variation of such lease, where the persons who would have been bound by such contract are willing to confirm such lease without variation. 1 Geo. V. c. 37, s. 11.

Proviso
where the
grantor or
reversioner
is willing to
confirm.

What may be
deemed a
confirmation.
of invalid
lease.
Imp. Act 13-14
Vic. c. 17,
s. 2.

12. Where, upon or before the acceptance of rent under any such invalid lease, any receipt, memorandum or note in writing confirming such lease is signed by the person accepting such rent, or some other person by him thereunto lawfully authorized, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease. 1 Geo. V. c. 37, s. 12.

Duty of
lessee to
accept con-
firmation.

Imp. Act 13-14
Vic. c. 17,
s. 3.

13. Where, during the continuance of the possession taken under any such invalid lease, the person, for the time being entitled, subject to such possession, to the land comprised in such lease, or to the possession or the receipt of the rents and profits thereof, is able to confirm such lease without variation the lessee, his heirs, executors, or administrators, or any person who would have been bound by the lease if the same had been valid, upon the request of the person so able to confirm the same, shall be bound to accept a confirmation accordingly; and such confirmation may be by memorandum or note in writing signed by the persons confirming and accepting, or by some other persons by them thereunto lawfully authorized; and, after confirmation and acceptance of confirmation, such lease shall be valid and shall be deemed to have had from the granting thereof the same effect as if the same had been originally valid. 1 Geo. V. c. 37, s. 13.

Effect of in-
valid leases if
grantor
continue in
ownership
until he
might law-
fully grant
the lease.

Imp. Act 12-13
V. c. 26,
s. 4.

14. Where a lease granted in the intended exercise of any power of leasing is invalid by reason that, at the time of the granting thereof, the person granting the same could not lawfully grant such lease, but the estate of such person in the land comprised in such lease has continued after the time when such, or the like lease, might have been granted by him in the lawful exercise of such power, such lease shall take effect and be as valid as if the same had been granted at such last mentioned time, and all the provisions of sections 11 to 17 shall apply to every such lease. 1 Geo. V. c. 37, s. 14.

15. Where a valid power of leasing is vested in, or may be exercised by, a person granting a lease, and, by reason of the determination of the estate or interest of such person or otherwise, such lease cannot have effect and continuance according to the terms thereof independently of such power such lease shall, for the purposes of the next preceding four sections, be deemed to be granted in the intended exercise of such power although such power is not referred to in such lease. 1 Geo. V. c. 37, s. 15.

What shall be deemed an intended exercise of a power.

Imp. Act 12-13 V. c. 26, s. 5.

16. Nothing in sections 11 to 17 shall extend to, prejudice, or take away any right of action, or other right or remedy to which, but for the next preceding five sections, the lessee named in any such lease, his heirs, executors, administrators, or assigns would or might have been entitled under or by virtue of any covenant for title or quiet enjoyment contained in such lease on the part of the person granting the same, or prejudice, or take away, any right of re-entry, or other right or remedy to which, but for such sections, the person granting such lease, his heirs, executors, administrators, or assigns, or other person, for the time being entitled to the reversion expectant on the determination of such lease, would or might have been entitled for or by reason of any breach of the covenants, conditions, or provisos contained in such lease, and on the part of the lessee, his heirs, executors, administrators, or assigns to be observed and performed. 1 Geo. V. c. 37, s. 16.

Saving the rights of the lessees under covenants for title and for quiet enjoyment, and the lessor's right of re-entry for breach of covenant, etc.

Imp. Act 12-13 V. c. 26, s. 6.

17. The next preceding six sections shall not extend to any lease, where, before the 10th day of June, 1857, the land comprised therein has been surrendered or relinquished, or recovered adversely by reason of the invalidity thereof, or there has been any judgment or decree in any action or suit concerning the validity of such lease. 1 Geo. V. c. 37, s. 17.

Exceptions to sections 11 to 16.

Imp. Act 12-13 V. c. 26, s. 7.

MERGER, ETC., OF REVERSIONS.

18. Where the reversion expectant on a lease of land merges or is surrendered, the estate which for the time being confers as against the tenant under the lease the next vested right to the land shall, to the extent of and for preserving such incidents to and obligations on the reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the lease. 1 Geo. V. c. 37, s. 18.

Effect of surrender or merger of reversion expectant on a lease in certain cases.

See Imp. Act, 8 and 9 V. c. 106, s. 9.

RIGHT OF RE-ENTRY.

19.—(1) In every demise, whether by parol or in writing and whenever made, unless it is otherwise agreed, there shall be deemed to be included an agreement that if the rent reserved, or any part thereof, shall remain unpaid for fifteen days after any of the days on which the same ought to have

Right of re-entry on non-payment of rent.

been paid, although no formal demand thereof shall have been made, it shall be lawful for the landlord at any time thereafter, into and upon the demised premises, or any part thereof in the name of the whole, to re-enter and the same to have again, repossess and enjoy as of his former estate. 1 Geo. V. c. 37, s. 19.

Implied agree-
ment for re-
entry on con-
viction of
tenant for
keeping
disorderly
house.
R.S.C. c. 146.

(2) In every such demise as aforesaid there shall be deemed to be included an agreement that if the tenant or any other person shall be convicted of keeping a disorderly house, within the meaning of *The Criminal Code*, on the demised premises, or any part thereof, it shall be lawful for the landlord at any time thereafter, into the demised premises, or any part thereof, to re-enter and the same to have again, repossess and enjoy as of his former estate. 2 Geo. V. c. 25, s. 1.

FORFEITURE OF LEASES.

Interpreta-
tion.

20.—(1) In this section and the next following three sections,

“Lease.”

Imp. Act
44-45 V. c. 41,
s. 14, and 55-56
V. c. 13,
s. 5.

(a) “Lease” shall include an original or derivative under-lease and a grant at a fee farm rent or securing a rent by condition and an agreement for a lease where the lessee has become entitled to have his lease granted;

“Lessee.”

(b) “Lessee” shall include an original or derivative under-lessee and the heirs, executors, administrators and assigns of a lessee and a grantee under such a grant and his heirs and assigns;

“Lessor.”

(c) “Lessor” shall include an original or derivative under-lessor and the heirs, executors, administrators and assigns of a lessor and a grantor under such a grant and his heirs and assigns;

“Mining
lease.”

(d) “Mining Lease” shall mean a lease for mining purposes, that is a searching for, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away or disposing of mines or minerals, and substances in, on or under the land, obtainable by underground or by surface working or purposes connected therewith and shall include a grant or license for mining purposes;

“Under-
lease.”

(e) “Under-lease” shall include an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

“Under-
lessee.”

(f) “Under-lessee” shall include any person deriving title under or from an under-lessee;

(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

Restrictions on and relief against forfeiture of leases.

Imp. Act 44-45
V. c. 41, s. 14
(1), 55-56
V. c. 13,
s. 5.

(3) Where a lessor is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the lessee may, in the lessor's action, if any, or if there is no such action pending, then in an action brought by himself, apply to the Court for relief; and the Court may grant such relief, as having regard to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the other circumstances the Court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the Court may deem just.

Relief against forfeiture.

(4) This section shall apply, although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease, in pursuance of the directions of a statute.

Where right of entry is under a statute.

(5) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

Lease until breach.

(6) Where the action is brought to enforce a right of re-entry or forfeiture for non-payment of rent and the lessee, at any time before judgment, pays into court all the rent in arrear and the costs of the action the proceedings in the action shall be forever stayed.

When proceedings may be stayed.

(7) Where relief is granted under the provisions of this section the lessee shall hold and enjoy the demised premises according to the lease thereof made without any new lease.

Position of lessee.

(8) This section shall apply to leases made either before or after the commencement of this Act and shall apply notwithstanding any stipulation to the contrary.

Application of section.

(9) This section shall not extend

(a) to a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for for-

Exceptions. Generally.

Rev. Stat.
c. 134.

feiture on the bankruptcy of the lessee, or on the lessee making an assignment for the benefit of creditors under *The Assignments and Preferences Act*, or on the taking in execution of the lessee's interest; or

Mining
leases.

(b) in the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof. 1 Geo. V. c. 37, s. 20.

Condition for
relief for non-
insurance.

(10) Where the right of re-entry or forfeiture is in respect of a breach of a covenant or condition to insure, relief shall not be granted if at the time of the application for relief there is not an insurance on foot in conformity with the covenant or condition to insure except, in addition to any other terms which the Court may impose, upon the term that the insurance is effected. 3-4 Geo. V. c. 18, s. 30.

LEASES, UNDER-LEASES, FORFEITURE.

Protection of
under-lessees
on forfeiture
of superior
lease.

55-56 V.
(Imp.) c. 13,
s. 4.

21. Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action, if any, or in any action brought by such person for that purpose, may make an order vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as under-lessee to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security or otherwise, as the Court in the circumstances of each case shall think fit; but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease. 1 Geo. V. c. 37, s. 21.

Who must
be parties
to an action
to enforce
right of re-
entry or
forfeiture.

22. Where a lessor is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease, if it be known to the lessor that he claims such right or interest or if the instrument under which he claims is registered in the proper registry or land titles office, shall be made a party to the action. 1 Geo. V. c. 37, s. 22.

License to
assign not to
be unreason-
ably with-
held.

23. In every lease made after the commencement of this Act containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without license or

consent, such covenant, condition or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that such license or consent shall not be unreasonably withheld. 1 Geo. V. c. 37, s. 23.

LICENSES.

24. Where a license to do any act which, without such license, would create a forfeiture, or give a right to re-enter under a condition or power reserved in a lease, is given to a lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but shall not prevent a proceeding for any subsequent breach unless otherwise specified in such license; and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made punishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done. 1 Geo. V. c. 37, s. 24.

Restriction of effect of license under power contained in lease, etc., Imp. Act. 22-23 V. c. 35, s. 1.

25. Where in a lease there is a power or condition of re-entry on assigning or underletting or doing any other specified act without license, and a license has been or is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or has been or is given to a lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares or interest in the property, or by the lessee or owner of the rest of the property, over or in respect of such shares or interest or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license. 1 Geo. V. c. 37, s. 25.

Restricted operation of partial licenses, Imp. Act. 22-23 V. c. 35, s. 2.

WAIVER OF COVENANT.

26. Where an actual waiver of the benefit of a covenant or condition in a lease, on the part of a lessor or his heirs, executors, administrators or assigns, is proved to have taken place in any one particular instance such actual waiver shall not be

Restriction of effect of waiver of covenant, Imp. Act. 23-24 Vic. c. 38, s. 6.

assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears. 1 Geo. V. c. 37, s. 26.

COVENANT TO PAY TAXES.

Covenant to pay taxes not to include taxes for local improvements.

27.—(1) Unless it is otherwise specifically provided in a lease made after the commencement of this Act a covenant by a lessee for payment of taxes shall not be deemed to include an obligation to pay taxes assessed for local improvements.

(As to Drainage Assessment see *The Municipal Drainage Act, R.S.O. c. 198, s. 92.*)

Effect of altering form of covenant.

Rev. Stat. c. 116.

(2) In the case of a lease made under *The Short Forms of Leases Act* where the words "except for local improvements" are struck out or omitted from the covenant number 3 in Schedule B of that Act such striking out or omission shall be deemed to be a specific provision otherwise made within the meaning of subsection 1. 1 Geo. V. c. 37, s. 27.

LENGTH OF NOTICES TO QUIT.

Notice to quit in case of weekly or monthly tenancies.

28. A week's notice to quit and a month's notice to quit, respectively, ending with the week or the month, shall be sufficient notice to determine, respectively, a weekly or monthly tenancy. 1 Geo. V. c. 37, s. 28.

TENANTS TO NOTIFY LANDLORDS.

Penalty on tenant receiving writ for recovery of land and not notifying his landlord.

29. Every tenant to whom a writ in an action for the recovery of land has been delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or to his landlord's bailiff or receiver; and, if he omits so to do, he shall be answerable to his landlord for all damages sustained by him by reason of the failure to give such notice. 1 Geo. V. c. 37, s. 29.

EXEMPTIONS FROM DISTRESS.

Goods exempt from execution to be exempt from distress.

Monthly tenancies.

Selection of exempted goods.

30.—(1) The goods and chattels exempt from seizure under execution shall not be liable to seizure by distress by a landlord for rent, except as hereinafter provided.

(2) In the case of a monthly tenancy the exemption shall only apply to two months' arrears of rent.

(3) The person claiming such exemption shall select and point out the goods and chattels which he claims to be exempt. 1 Geo. V. c. 37, s. 30.

31.—(1) A landlord shall not distrain for rent on the goods and chattels of any person except the tenant or person who is liable for the rent, although the same are found on the premises; but this restriction shall not apply in favour of a person claiming title under an execution against the tenant, or in favour of a person whose title is derived by purchase, gift, transfer, or assignment from the tenant, whether absolute or in trust, or by way of mortgage or otherwise, nor to the interest of the tenant in any goods or chattels on the premises in the possession of the tenant under a contract for purchase, or by which he may or is to become the owner thereof upon performance of any condition, nor where goods or chattels have been exchanged between tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord, nor shall the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant, or by any other relative of his, if such other relative lives on the premises as a member of the tenant's family, or by any person whose title is derived by purchase, gift, transfer or assignment from any relative to whom such restriction does not apply.

Goods on premises not property of tenant to be exempt.

Exceptions.

(2) Nothing in this section shall exempt from distress goods or chattels in a store or shop managed or controlled by an agent or clerk for the owner of such goods or chattels where such clerk or agent is also the tenant and in default, and the rent is due in respect of the store or shop or premises rented therewith and thereto belonging, if such goods or chattels would have been liable to seizure but for this Act.

Goods in store managed by agent who is in default.

(3) Subject to the provisions of section 34, "tenant" in this section shall include a subtenant and the assigns of the tenant and any person in actual occupation of the premises under or with the assent of the tenant during the currency of the lease, or while the rent is due or in arrear, whether or not he has attained to or become the tenant of the landlord. 1 Geo. V. c. 37, s. 31.

"Tenant," meaning of in this section.

PROTECTION OF GOODS OF LODGERS FROM DISTRESS.

32.—(1) If a superior landlord distrains or threatens to distrain any goods or chattels of a boarder or lodger for arrears of rent due to him by his immediate tenant, the boarder or lodger may serve the superior landlord, or the bailiff or other person employed by him to levy the distress, with a statutory declaration made by the boarder or lodger setting forth that the immediate tenant has no right of property or beneficial interest in such goods or chattels, and that they are the property or in the lawful possession of such boarder or lodger, and also setting forth whether any and what amount by way of rent, board or otherwise is due from the boarder or lodger to the immediate tenant; and to such declaration shall

Declaration by boarder or lodger that immediate tenant has no property in goods distrained.

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be annexed a correct inventory, subscribed by the boarder or lodger, of the goods and chattels mentioned in the declaration; and the boarder or lodger may pay to the superior landlord, or to the bailiff or other person employed by him, the amount, if any, so due, or so much thereof as is sufficient to discharge the claim of the superior landlord.

Penalty for improper levy.

(2) If the superior landlord, bailiff or other person, after being served with the declaration and inventory, and after the boarder or lodger has paid or tendered to him the amount, if any, which, by subsection 1, the boarder or lodger is authorized to pay, levies or proceeds with a distress on the goods or chattels of the boarder or lodger the superior landlord, bailiff or other person shall be guilty of an illegal distress, and the boarder or lodger may replevy such goods or chattels in any court of competent jurisdiction; and the superior landlord shall also be liable to an action, at the suit of the boarder or lodger, in which the truth of the declaration and inventory may be inquired into.

Effect of payments by boarder or lodger.

(3) Any payment made by a boarder or lodger pursuant to subsection 1 shall be a valid payment on account of the amount due from him to the immediate tenant. 1 Geo. V. c. 37, s. 32.

Duty of tenant claiming exemption to surrender premises.

33.—(1) A tenant in default for non-payment of rent shall not be entitled to the benefit of the exemption provided for by section 30 unless he gives up possession of the premises forthwith or is ready and offers to do so.

To whom offer of surrender to be made.

(2) The offer may be made to the landlord or to his agent; and the person authorized to seize and sell the goods and chattels, or having the custody of them for the landlord, shall be considered an agent of the landlord for the purpose of the offer and surrender to the landlord of possession. 1 Geo. V. c. 37, s. 33; 2 Geo. V. c. 25, s. 2 (1).

Seizure of exempted goods.

34.—(1) Where a landlord desires to seize exempted goods he shall, after default has been made in the payment of rent and before or at the time of seizure, serve the tenant with a notice, Form 1.

Effect of surrender of possession.

(2) The surrender of possession in pursuance of the notice shall be a determination of the tenancy. 1 Geo. V. c. 37, s. 34.

Right of set-off.

35.—(1) A tenant may set off against the rent due a debt due to him by the landlord.

Notice thereof.

(2) Notice of the claim of set-off, Form 2, may be given before or after the seizure.

Effect of notice.

(3) When the notice is given the landlord shall be entitled to distrain, or to proceed with the distress, only for the balance of the rent after deducting any debt justly due by him to the tenant which is mentioned in the notice. 1 Geo. V. c. 37, s. 35.

36.—(1) Service of notices under sections 28, 34 and 35 shall be made either personally or by leaving the same with a grown-up person in and apparently residing on the premises occupied by the person to be served. Service of notices as to exemptions or set-off.

(2) If the tenant cannot be found and his place of abode is not known, or admission thereto cannot be obtained, the posting up of the notice on some conspicuous part of the premises shall be good service. 1 Geo. V. c. 37, s. 36; 2 Geo. V. c. 25, s. 2 (2). Posting up notice in lieu of service.

37. No proceeding under the next preceding four sections shall be rendered invalid by any defect in form. 1 Geo. V. c. 37, s. 37. Formal defects not to invalidate.

38.—(1) In case of an assignment for the general benefit of creditors by a tenant the preferential lien of the landlord for rent shall be restricted to the arrears of rent due during the period of one year next preceding, and for three months following the execution of the assignment, and from thence so long as the assignee retains possession of the premises. Lien of landlord for rent after assignment for benefit of creditors.

(2) Notwithstanding any provision, stipulation or agreement in any lease or agreement, in case of an assignment for the general benefit of creditors, or of an order being made for the winding-up of an incorporated company, the assignee or liquidator may, within one month from the execution of the assignment or the making of the winding-up order, by notice in writing signed by him given to the landlord, elect to retain the premises occupied by the assignor or company at the time of the assignment or winding-up order for the unexpired term of any lease under which such premises were held, or for such portion of the term as he shall see fit, upon the terms of the lease and subject to payment of the rent therefor provided by such lease or agreement. 1 Geo. V. c. 37, s. 38. Right of assignee to retain possession for remainder of term.

DISTRESS.

39. Every person may have the like remedy by distress, and by impounding and selling the property distrained in cases of rents seek, as in case of rent reserved upon lease. 1 Geo. V. c. 37, s. 39. Distress for rents seek. 4 Geo. II. c. 28, s. 5.

40. A person having any rent due and in arrear, upon any lease for life or lives or for years, or at will, ended or determined, may distrain for such arrears, after the determination of the lease, in the same manner as he might have done if the lease had not been ended or determined, if such distress is made within six months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due. 1 Geo. V. c. 37, s. 40. Distress for arrears on leases determined. 8 Anne, c. 18, (or c. 14 in Ruffhead's Ed.) ss. 6 and 7. Limitation of such distress.

Right of persons entitled to rent during life of another to recover same after death. 32 Hen. VIII., c. 37, s. 4.

Distress to be reasonable. 52 Hen. III., (St. of Marlbridge), c. 4, part; St. of uncert. date, (Imp. Rev. St., 1870, p. 126.)

Right to distrain grain, etc.

2 W. & M. Sess. 1, c. 5, s. 3.

Saving.

Right to distrain cattle or live stock.

Right to distrain standing crops.

Disposal thereof.

11 Geo. II. c. 19, s. 8.

Tenant's right to notice of place of keeping.

41. A person entitled to any rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person for whose life such rent or land depended as he might have done if the person by whose death the estate in such rent or land determined had continued in life. 1 Geo. V. c. 37, s. 41.

42. Distress, whether for a debt due to the Crown or to any person, shall be reasonable. 1 Geo. V. c. 37, s. 42.

PROPERTY LIABLE TO DISTRESS.

43. A person having rent due and in arrear upon any demise, lease, or contract may seize and secure any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary or otherwise upon any part of the land charged with such rent, and may lock up or detain the same, in the place where the same is found, for or in the nature of a distress until the same is replevied; and, in default of the same being replevied, may sell the same after appraisement thereof to be made; but such grain or hay so distrained shall not be removed by the person distraining, to the damage of the owner thereof, out of the place where the same is found and seized, but shall be kept there, as impounded, until it is replevied or sold in default of replevying. 1 Geo. V. c. 37, s. 43.

44.—(1) A landlord may take and seize, as a distress for arrears of rent, any cattle or live stock of his tenant feeding or pasturing upon any highway, or on any way belonging to the demised premises or any part thereof.

(2) Subject to the provisions of subsection 4, a landlord may take and seize standing crops as a distress for arrears of rent, and may cut, gather, make, cure, carry and lay up the same, when ripe, in the barns or other proper place on the demised premises, and if there is no barn or proper place on the demised premises then in any other barn or proper place which the landlord hires or otherwise procures for that purpose as near as may be to the premises, and may in convenient time appraise, sell or otherwise dispose of the same towards satisfaction for the rent for which such distress is made, and of the charges of such distress, appraisement and sale in the same manner as other goods and chattels may be seized, distrained and disposed of, and the appraisement thereof shall be taken when cut, gathered, cured and made and not before.

(3) Notice of the place where the goods and chattels so distrained are lodged or deposited shall, within one week after the lodging or depositing thereof, be given to the tenant or left at his last place of abode.

(4) If, after a distress of standing crops so taken for arrears of rent, and at any time before the same are ripe and cut, cured or gathered, the tenant pays to the landlord for whom the distress is taken the whole rent then in arrear, with the full costs and charges of making such distress and occasioned thereby, then, upon such payment or lawful tender thereof, the same and every part thereof shall cease, and the standing crops so distrained shall be delivered up to the tenant.

Satisfying
distress of
standing
crops.
11 Geo. II. c.
19, s. 9.

(5) Where standing crops are distrained for rent they may, at the option of the landlord, be advertised and sold in the same manner as other goods; and it shall not be necessary for the landlord to reap, thresh, gather or otherwise market the same.

Sale of
standing
crops.

(6) Any person purchasing standing crops at such sale shall be liable for the rent of the land upon which the same are standing at the time of the sale, and until the same are removed, unless the rent has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall, as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupies it. 1 Geo. V. c. 37, s. 44.

Liability
of purchaser
of standing
crops.

45. Beasts that gain the land and sheep shall not be distrained for a debt due to the Crown, nor for a debt due to any man, nor for any other cause, if there are other chattels sufficient to satisfy the debt or demand; but this provision shall not affect the right to impound beasts which a man finds on his land damage feasant. 1 Geo. V. c. 37, s. 45.

Conditional
exemption
of certain
beasts.

Stat. of
uncertain
date. Imp.
Rev. St. 1870,
p. 126.

WHERE DISTRESS MAY BE TAKEN.

46. Save as provided by section 45, and as hereinafter provided, goods or chattels which are not at the time of the distress upon the premises in respect of which the rent distrained for is due shall not be distrained for rent. 1 Geo. V. c. 37, s. 46.

Chattels not
to be dis-
trained off
the premises.
53 Hen. III.
(St. Marl-
bridge),
c. 15.

FRAUDULENT REMOVAL.

47.—(1) Where any tenant, for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is reserved, due, or made payable, fraudulently or clandestinely conveys away, or carries off or from such premises his goods or chattels to prevent the landlord from distraining the same for arrears of rent so reserved, due, or made payable the landlord or any person by him for that purpose lawfully empowered, may, within thirty days next ensuing such conveying away or carrying off, take and seize such goods and chattels wherever the same

Landlords
may dis-
train goods
fraudulently
carried off
the pre-
mises.

11 Geo. II.
c. 19, s. 1.

are found, as a distress for such arrears of rent, and the same sell or otherwise dispose of in such manner as if such goods and chattels had actually been distrained by the landlord upon such premises for such arrears of rent.

Exception.

11 Geo. II.
c. 19, s. 2.

(2) No landlord or other person entitled to such arrears of rent shall take or seize, as a distress for the same, any such goods or chattels which have been sold in good faith and for a valuable consideration, before such seizure made, to any person not privy to such fraud. 1 Geo. V. c. 37, s. 47.

Right of
landlord
to break
open houses
where goods
fraudulently
secured.

11 Geo. II.
c. 19, s. 7.

48. Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant, his servant, or agent, or other person aiding or assisting therein are or are believed to be in any house, barn, stable, outhouse, yard, close or place, locked up, fastened, or otherwise secured so as to prevent them from being taken and seized as a distress for arrears of rent, the landlord or his agent may take and seize, as a distress for rent, such goods and chattels, first calling to his assistance a constable or peace-officer who is hereby required to aid and assist therein, and, in case of a dwelling-house, oath being also first made of a reasonable ground to believe that such goods or chattels are therein, and, in the daytime, break open and enter into such house, barn, stable, outhouse, yard, close or place and take and seize such goods and chattels for the arrears of rent as he might have done if they were in an open field or place upon the premises from which they were so conveyed or carried away. 1 Geo. V. c. 37, s. 48.

Penalty for
fraudulently
removing, or
assisting to
remove,
goods.

11 Geo. II.
c. 19, s. 3.

49. If a tenant so fraudulently removes, conveys away or carries off his goods or chattels, or if any person wilfully and knowingly aids or assists him in so doing, or in concealing the same, every person so offending shall forfeit and pay to the landlord double the value of such goods, to be recovered by action in any Court of competent jurisdiction. 1 Geo. V. c. 37, s. 49.

Beasts dis-
trained not
to be driven
out of the
municipality.
3 Edw. I.
(St. of
Westminster
Prim.) c. 16,
and 1 P. & M.
c. 12, s. 1,
part.

IMPOUNDING DISTRESS.

50.—(1) Beasts or cattle distrained shall not be removed or driven out of the local municipality, as defined by *The Municipal Act*, in which they are distrained, except to a fitting pound or enclosure within the same county or district not more than three miles distant from the place where the distress is taken.

Impounding.
1 P. & M.
c. 12, s. 1,
part.

(2) No cattle, or other goods or chattels, distrained or taken by way of distress for any cause at one time shall be impounded in several places.

Penalty.

(3) Every person offending against this section shall forfeit to the person aggrieved \$20 in addition to the damages sustained by him.

(4) Any person lawfully taking any distress for any kind of rent may impound, or otherwise secure the distress so made, in such place or on such part of the premises chargeable with the rent as is most fit and convenient for that purpose, and may appraise, sell and dispose of the same upon the premises; and it shall be lawful for any person to come and go to and from such place or part of the premises where any distress for rent is so impounded and secured to view, appraise and buy, and to carry off or remove the same on account of the purchaser thereof. 1 Geo. V. c. 37, s. 50.

Where goods may be impounded.

11 Geo. II. c. 19, s. 10.

POUND BREACH, OR RESCUE.

51. Upon any pound breach or rescue of goods or chattels distrained for rent the person offending, or the owner of the goods distrained, in case the same are afterwards found to have come to his use or possession, shall forfeit to the person aggrieved \$20 in addition to the damages sustained by him. 1 Geo. V. c. 37, s. 51.

Pound breach or rescue, damages for.

2 W. & M. Sess. 1, c. 5, s. 4.

SALE OF GOODS DISTRAINED.

52. Where any goods or chattels are distrained for any rent reserved and due upon any demise, lease or contract, and the tenant or owner of them does not, within five days next after such distress taken and notice thereof, with the cause of such taking, left at the dwelling house or other most conspicuous place on the premises charged with the rent distrained for, replevy the same, then, after such distress and notice and the expiration of such five days, the person distraining shall cause the goods and chattels so distrained to be appraised by two appraisers, who shall first be sworn to appraise the same truly, according to the best of their understandings, a memorandum of which oath is to be indorsed on the inventory, and after such appraisement the person so distraining may lawfully sell the goods and chattels so distrained for the best price which can be got for the same towards satisfaction of the rent for which the same were distrained and of the charges of such distress, appraisement and sale, and shall hold the overplus, if any, for the owner's use and pay the same over to him on demand. 1 Geo. V. c. 37, s. 52.

Sale of distress, when it may be made.

(See 2 W. & M. Sess. 1, c. 5, s. 1.)

Appraisement.

WRONGFUL OR IRREGULAR DISTRESS.

53. Where any distress is made for any kind of rent justly due, and any irregularity or unlawful act shall afterwards be done by the person distraining, or by his agent, or if there has been an omission to make the appraisement under oath, the distress itself shall not be therefore deemed to be unlawful, nor the person making it be deemed a trespasser *ab initio*, but the person aggrieved by such

Irregularities not to make distress void *ab initio*.

11 Geo. II. c. 19, s. 19.

unlawful act or irregularity may recover by action full satisfaction for the special damage sustained thereby. 1 Geo. V. c. 37, s. 53.

Wrongful
distress,
52 H-n. III.,
c 4, in part;
and 3 Edw. I.,
c. 16.

Where no
rent due.

2 W. & M.
Sess. 1, c. 5,
s. 5.

54.—(1) A distrainor who takes an excessive distress, or takes a distress wrongfully, shall be liable in damages to the owner of the goods or chattels distrained.

(2) Where a distress and sale are made for rent pretended to be in arrear and due when, in truth, no rent is in arrear or due to the person distraining, or to the person in whose name or right such distress is taken, the owner of the goods or chattels distrained and sold, his executors, or administrators shall be entitled, by action to be brought against the person so distraining, to recover full satisfaction for the damage sustained by the distress and sale. 1 Geo. V. c. 37, s. 54.

GOODS TAKEN IN EXECUTION NOT TO BE REMOVED WITHOUT PAYMENT OF RENT.

Goods taken
in execution
not to be re-
moved till
rent paid.

8 Anne, c. 18
(or c. 14 in
Ruffhead's
Ed.), s. 1.

55.—(1) Goods or chattels lying or being in or upon any land leased for life or lives, or term of years, at will, or otherwise shall not be liable to be taken by virtue of any execution issued out of the Supreme Court or out of a County or District Court on any pretence whatsoever, unless the party at whose suit the execution is sued out before the removal of such goods or chattels from the premises by virtue of such execution pays to the landlord or his bailiff all money due for rent of the premises at the time of the taking of such goods or chattels by virtue of such execution if the arrears of rent do not amount to more than one year's rent.

When ex-
ecution may
be proceeded
with.

(2) If such arrears exceed one year's rent the party at whose suit such execution is sued out, on paying the landlord or his bailiff one year's rent, may proceed to execute his judgment.

What to be
paid to
execution
creditor.

(3) The sheriff or other officer shall levy and pay to the execution creditor as well the money so paid for rent as the execution money. 1 Geo. V. c. 37, s. 55.

(As to executions out of Division Courts, see The Division Courts Act, R.S.O. c. 63, section 216.)

CROPS SEIZED UNDER EXECUTION.

Liability of
growing crops
seized and
sold under
execution for
accruing rent.

56. Where all or any part of the standing crops of the tenant of any land is seized and sold by any sheriff or other officer by virtue of any writ of execution such crops, so long as the same remain on the land in default of sufficient distress of the goods and chattels of the tenant, shall be liable for the rent which may accrue and become due to the land-

lord after any such seizure and sale, and to the remedies by distress for recovery of such rent; and that notwithstanding any bargain and sale or assignment which may have been made or executed of such crops by any such sheriff or other officer. 1 Geo. V. c. 37, s. 56.

LIABILITY OF TENANTS OVERHOLDING.

57. Where a tenant for any term for life, lives or years, or other person who comes into possession of any land, by, from, or under, or by collusion with such tenant, wilfully holds over such land or any part thereof after the determination of such term, and after notice in writing given for delivering the possession thereof by his landlord or the person to whom the remainder or reversion of such land belongs or his agent thereunto lawfully authorized, such tenant or other person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to such person or his assigns at the rate of double the yearly value of the land so detained for so long as the same is detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which penalty there shall be no relief. 1 Geo. V. c. 37, s. 57.

Imp. Act
14-15 V. c. 25,
s. 2.

Penalty of
double value
for over-
holding.

4 Geo. II. c.
28, s. 1.

58. Where a tenant gives notice of his intention to quit the premises by him holden at a time mentioned in such notice, and does not accordingly deliver up the possession thereof at the time mentioned in such notice the tenant shall from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for, and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid while such tenant continues in possession. 1 Geo. V. c. 37, s. 58.

Penalty of
double rent
for overhold-
ing after
tenant gives
notice to quit.

11 Geo. II.
c. 19,
s. 18.

EXECUTORS OR ADMINISTRATORS.

59. The executors or administrators of a landlord may distrain for the arrears of rent due to such landlord in his lifetime, and may sue for the same in like manner as such landlord might have done if living, and the powers and provisions contained in this Act relating to distresses for rent shall be applicable to the distresses so made. 1 Geo. V. c. 37, s. 59.

Right of
personal
representatives
to distrain
for arrears

[As to Waste see *The Conveyancing and Law of Property Act*, R.S.O. c. 109.]

ATTORNMENT.

60. Every attornment of a tenant of any land to a stranger claiming title to the estate of his landlord shall be

Nullity of
attornment
to stranger.

11 Geo. II.
c. 19, s. 11.

absolutely null and void; and the possession of his landlord shall not be deemed to be changed, altered or affected by any such attornment; but nothing herein shall vacate or affect any attornment made pursuant to and in consequence of a judgment or order of a court, or made with the privity and consent of the landlord, or to any mortgagee after the mortgage has become forfeited. 1 Geo. V. c. 37, s. 60.

Attornment
of tenant, in
what cases
not neces-
sary.

4-5 Anne,
c. 3 (or c. 16,
in Ruffhead's
Ed.), s. 9.

61.—(1) Every grant or conveyance of any rent or of the reversion or remainder of any land shall be good and effectual without any attornment of the tenant of the land out of which such rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

Tenant not
to be pre-
judiced.

4-5 Anne, c. 3,
(or c. 16, in
Ruffhead's
Ed.) s. 10.

(2) A tenant shall not be prejudiced or damaged by the payment of rent to any grantor or by breach of any condition for non-payment of rent before notice to him of such grant by the grantee. 1 Geo. V. c. 37, s. 61.

RENEWALS—CHIEF LEASE MAY BE RENEWED WITHOUT SURRENDER OF UNDER-LEASE.

Chief leases
may be re-
newed with-
out surren-
dering all the
under-leases.

4 Geo. II., c.
28, s. 6.

62.—(1) Where a lease is duly surrendered in order to be renewed, and a new lease is made and executed by the chief landlord, the new lease shall, without a surrender of all or any of the under-leases, be as good and valid as if all the under-leases derived thereout had been likewise surrendered at or before the time of taking of such new lease.

Rights and
remedies of
parties there-
under.

(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of such new lease shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under-lessees shall hold and enjoy the land in the respective under-leases comprised as if the original lease had been kept on foot and continued, and the chief landlord shall have and be entitled to such and the same remedy by distress or entry in and upon the land comprised in any such under-lease for the rents and duties reserved by such new lease, so far as the same do not exceed the rents and duties reserved in the lease out of which such under-lease was derived, as he would have had if such former lease had been still continued or as he would have had if the respective under-leases had been renewed under such new principal lease. 1 Geo. V. c. 37, s. 62.

RENEWAL OF LEASE BY ABSENTEES.

Who may
renew on be-
half of
persons out of
Ontario.

63.—(1) Where any person who, in pursuance of any covenant or agreement in writing, if within Ontario and amenable to the process of the Supreme Court, might be compelled to execute any lease by way of renewal, is not within

Ontario, or is not amenable to the process of the Court, the Court, upon the motion of any person entitled to such renewal, whether such person is or is not under any disability, may direct such person as the Court thinks proper to appoint for that purpose to accept a surrender of the subsisting lease, and to make and execute a new lease in the name of the person who ought to have renewed the same.

Imp. Act 11
Geo. IV., and
1 W. IV., c.
65, s. 18.

(2) A new lease executed by the person so appointed shall be as valid as if the person in whose name the same was made was alive and not under any disability and had himself executed it.

Validity of
such new
lease.

(3) In every such case it shall be in the discretion of the Court to direct an action to be brought to establish the right of the person seeking the renewal, and not to make the order for such new lease unless by the judgment to be made in such action, or until after it shall have been entered.

Discretion of
court to direct
action to be
brought.

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant or agreement unless the sum or sums of money, if any, which ought to be paid on such renewal and the things, if any, which ought to be performed in pursuance of such covenant or agreement by the tenant be first paid and performed, and counterparts of every such renewed lease shall be duly executed by the tenant.

Conditions.

Imp. Act 11
Geo. IV., and
1 W. IV., c.
65, s. 20.

(5) All sums of money which are had, received or paid for, or on account of, the renewal of any lease by any person out of Ontario or not amenable to the process of the Supreme Court, after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into the Supreme Court to such account, and be applied and disposed of as the Court shall direct.

Premiums,
how to be
paid.

Imp. Act
11 Geo. IV.
and 1 W.
IV. c. 65,
s. 21.

(6) The Court may order the costs and expenses of and relating to the applications, orders, directions, conveyances and transfers, or any of them, to be paid and raised out of or from the land, or the rents in respect of which the same are respectively made, in such manner as the Court shall deem proper. 1 Geo. V. c. 37, s. 63.

Costs.

Imp. Act 11
Geo. IV. and
1 W. IV. c.
65, s. 35.

PART II.

DISPUTES AS TO RIGHT TO DISTRAIN.

64. In this Part,

“ Judge ” shall mean Judge of the County or District Court of the county or district in which a distress to which this Part applies is made. 1 Geo. V. c. 37, s. 64.

Interpreta-
tion.

“ Judge.”

Disputes as to right to distrain.

65. Where goods or chattels are distrained by a landlord for arrears of rent, and the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, the tenant may apply to the Judge to determine the matters so in dispute, and the Judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just. 1 Geo. V. c. 37, s. 65.

Order of Judge pending determination of dispute.

66. Where notice of such an application has been given to the landlord the Judge, pending the disposition of it by him, may make such order as he may deem just for the restoration to the tenant of the whole or any part of the goods or chattels distrained, upon the tenant giving security, by payment into court or otherwise as the Judge may direct, for the payment of the rent which shall be found due to the landlord and for the costs of the distress and of the proceedings before the Judge and of any appeal from his order, or such of them as the tenant may be ordered to pay. 1 Geo. V. c. 37, s. 66.

Jurisdiction of Judge.

67. The Judge shall have jurisdiction and authority to determine any question arising upon the application which the Court of which he is Judge has jurisdiction to determine in an action brought in that court. 1 Geo. V. c. 37, s. 67.

When Judge to direct that action be brought or issue tried.

68. Where the amount of the rent claimed by the landlord exceeds \$800, or where any question is raised which a County or District Court would not have jurisdiction to try in an action brought in such Court, the Judge shall not, without the consent in writing of the landlord, deal with the application summarily, but shall direct an action to be brought or an issue to be tried in the Supreme Court for the determination of the matters in dispute. 1 Geo. V. c. 37, s. 68.

Interim order for restoration of goods on security being given, etc.

69.—(1) Where the Judge, under the next preceding section, directs an action to be brought or an issue to be tried he shall have the like power as to the restoration to the tenant of the goods or chattels or of any part of them as is conferred by section 66, and where it is exercised the security shall be as provided in that section except that, as to costs, it shall be not only for the costs of the proceedings before the Judge but also for the costs of the action or issue, including any appeal therein or such of them as the tenant may be ordered to pay.

Cost of proceedings.

(2) The Supreme Court shall determine by whom and in what manner the costs of the action or issue and of the application to the Judge shall be borne and paid.

Entry of judgment.

(3) Judgment may be entered in accordance with the direction of the Court, made at or after the trial, and may

be enforced in like manner as a judgment of the Court.
1 Geo. V. c. 37, s. 69.

70. Where the amount claimed by the landlord does not exceed \$100 the decision of the Judge shall be final.
1 Geo. V. c. 37, s. 70.

When decision of judge to be final.

71. Where the amount claimed by the landlord exceeds \$100 an appeal shall lie from any order of the Judge, made on an application to him under the provisions of section 65, by which the matters in dispute are determined, in like manner as if the same were a judgment of the Court of which he is Judge pronounced in an action. 1 Geo. V. c. 37, s. 71.

Appeal from summary determination.

72. Where an issue is tried there shall be the same right of appeal from the judgment as if the judgment had been pronounced in an action. 1 Geo. V. c. 37, s. 72.

Appeal when action brought or issue tried.

73. Where the amount claimed by the landlord does not exceed \$100 the costs of the proceedings before the Judge shall be on the Division Court scale, and where the amount claimed exceeds \$100 they shall be on the County Court scale, except in an action or issue in the Supreme Court directed under section 68. 1 Geo. V. c. 37, s. 73.

Scale of costs.

74. Nothing in this Part shall take away or affect any remedy which a tenant may have against his landlord or require a tenant to proceed under this Part instead of by bringing an action, but where, instead of proceeding under this Part, he proceeds by action the Court in which the action is brought, if of opinion that it was unnecessarily brought and that a complete remedy might have been had by a proceeding under this Part, may direct the tenant, although he succeeds, to pay any additional costs occasioned by his having brought the action. 1 Geo. V. c. 37, s. 74.

Other remedies of tenant.

PART III.

OVERHOLDING TENANTS.

75.—(1) Where a tenant after his lease or right of occupation, whether created by writing or by parol, has expired or been determined, either by the landlord or by the tenant, by a notice to quit or notice pursuant to a proviso in any lease or agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses or neglects to go out of possession of the land demised to him, or which he has been permitted to occupy, his landlord may apply upon affidavit to the Judge of the County or District Court of the county or district in which the land lies to make the inquiry hereinafter provided for.

Application to County Court Judge against overholding tenant.

Inquiring and
determination.

(2) The Judge shall in writing appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired or has been determined by a notice to quit or for default in payment of rent or otherwise, and whether the tenant holds the possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession.

Notice there-
of to be
served on
the tenant.

(3) Notice in writing of the time and place appointed, stating briefly the principal facts alleged by the complainant as entitling him to possession, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition for every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the Judge's appointment and of the affidavit on which it was obtained, and of the documents to be used upon the application. 1 Geo. V. c. 37, s. 75.

Proceedings,
how intitled.

76. The proceedings under this Part shall be intituled in the County or District Court of the county or district in which the land lies, and shall be styled:

"In the matter of (*giving the name of the party complaining*), Landlord, against (*giving the name of the party complained against*) Tenant."

1 Geo. V. c. 37, s. 76.

Proceedings
in default of
appearance.

77.—(1) If, at the time and place appointed, the tenant fails to appear, the Judge, if it appears to him that the tenant wrongfully holds against the right of the landlord, may order a writ of possession, Form 3, directed to the sheriff of the county or district in which the land lies to be issued commanding him forthwith to place the landlord in possession of the land.

In case of
appearance.

(2) If the tenant appears the Judge shall, in a summary manner, hear the parties and their witnesses, and examine into the matter, and if it appears to the Judge that the tenant wrongfully holds against the right of the landlord he may order the issue of the writ. 1 Geo. V. c. 37, s. 77.

Appeal.

78.—(1) An appeal shall lie to a Divisional Court from the order of the Judge granting or refusing a writ of possession and the provisions of *The County Courts Act* as to appeals shall apply to such an appeal.

Rev. Stat. c. 59.

Discharging
order for
possession on
appeal.

(2) If the Divisional Court is of opinion that the right to possession should not be determined in a proceeding under this Part the court may discharge the order of the Judge, and the landlord may in that case proceed by action for the recovery of possession.

(3) When the order is discharged, if possession has been given to the landlord under a writ of possession, the court may direct that possession be restored to the tenant. Restoring
tenant to
possession.
1 Geo. V. c. 37, s. 78.

PART IV.

GENERAL PROVISIONS.

79. Except as therein otherwise provided the practice and procedure under Parts II. and III. shall be in accordance with the practice and procedure in the County Courts. Practice and
Procedure.
1 Geo. V. c. 37, s. 79.

FORM 1.

(Section 34.)

NOTICE TO TENANT.

Take notice that I claim \$ for rent due to me in respect of the premises which you hold as my tenant, namely (*here briefly describe them*); and unless the said rent is paid, I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only you are entitled to claim exemption for.

Take notice further, that if you neither pay the said rent nor give me possession of the said premises within three days after the service of this notice, I am by *The Landlord and Tenant Act* entitled to seize and sell, and I intend to seize and sell all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.

Dated this day of , 19 .
A.B. (*landlord*).

To C.D. (*tenant*).

1 Geo. V. c. 37, Form 1.

FORM 2.

(Section 35.)

NOTICE TO LANDLORD.

Take notice, that under *The Landlord and Tenant Act* I wish to set off against rent due by me to you, the debt which you owe to me on your promissory note for (*or as the case may be*).
dated

Dated this day of , 19 .
C.D. (*tenant*).

1 Geo. V. c. 37, Form 2.

FORM 3.

(Section 77.)

WRIT OF POSSESSION.

ONTARIO,

To WIT:

George the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith.

[L.S.]

To the Sheriff of the

Greeting:

Whereas

Judge of the Court
of , by his order dated the
day of , 19 , made in pursuance of *The*
Landlord and Tenant Act, on the complaint of
against , adjudged

that was entitled to the possession
of

with the appurtenances in your Bailiwick, and that a Writ should issue out of Our said Court accordingly (*if costs are awarded add* and also ordered and directed that the said should pay the costs of the proceedings had under the said Act, which have been taxed at the sum of).

THEREFORE, WE COMMAND YOU that without delay you cause the said to have possession of the said land and premises, with the appurtenances (*if costs are awarded add* and We also command you that of the goods and chattels and lands and tenements of the said in your Bailiwick, you cause to be made being the said costs so taxed and have that money in Our said Court immediately after the execution hereof, to be rendered to the said).

And in what manner you shall have executed this Writ make appear to Our said Court, immediately after the execution hereof, and have there then this Writ.

Witness,
Court at
of

Judge of Our said
, this
, 19 . day

Clerk.

Issued from the office of the Clerk of the County (or District) Court of the County (or United Counties, or District) of
Clerk.

1 Geo. V. c. 37, Form 3.

CHAPTER 156.

An Act respecting the Apportionment of
Periodical Payments.

HIS MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts
as follows:

1. This Act may be cited as *The Apportionment Act*. 1 Geo. Short title.
V. c. 21, s. 1.

2. In this Act,

Interpreta-
tion.

- (a) "Annuities" shall include salaries and pensions; "Annuities."
- (b) "Dividends" shall include all payments made by the "Dividends."
name of dividend, bonus or otherwise out of revenues of trading or other public companies divisible between all or any of the members, whether such payments are usually made or declared at any fixed times or otherwise, but shall not include payments in the nature of a return or re-imbursement of capital; and
- (c) "Rent" shall include rent service, rent charge and "Rent."
rent seek and all periodical payments or renderings in lieu or in the nature of rent. 1 Geo. V. c. 21,
s. 2.

3. Dividends shall, for the purposes of this Act, be deemed Dividends,
to have accrued by equal daily increment during and within how deemed
the period for or in respect of which the payment of the to accrue.
same is declared or expressed to be made. 1 Geo. V. c. 21, s. 3.

4. All rents, annuities, dividends, and other periodical pay- Rents, etc.,
ments in the nature of income, whether reserved or made pay- how to
able under an instrument in writing or otherwise, shall, like accrue and
interest on money lent, be considered as accruing from day to be apportion-
day, and shall be apportionable in respect of time accordingly. tionable.
1 Geo. V. c. 21, s. 4. Imp. Act
33-34 V. c.
35, s. 2.

5. The apportioned part of any such rent, annuity, divi- When ap-
dend or other periodical payment shall be payable or recover- portioned,
able in the case of a continuing rent, annuity, dividend or part of rent,
other such payment when the entire portion, of which such etc., to be
apportioned part forms part, becomes due and payable, and payable.
not before; and in the case of a rent, annuity or other such
payment determined by re-entry, death or otherwise, when the Imp. Act,
33-34 V. c.
35, s. 3.

next entire portion of the same would have been payable if the same had not so determined, and not before. 1 Geo. V. c. 21, s. 5.

Recovering
apportioned
parts.

6.—(1) All persons and their respective heirs, executors, administrators and assigns, and also the executors, administrators and assigns, respectively, of persons whose interests determine with their own deaths, shall have such or the same remedies for recovering such apportioned parts when payable, allowing proportionate parts of all just allowances, as they respectively would have had for recovering such entire portions if entitled thereto.

Imp. Act 33-
54 V. c. 35,
s. 4.

Proviso as to
rents re-
served in cer-
tain cases.

(2) The persons liable to pay rents reserved out of or charged on lands or other hereditaments, and the same lands or other hereditaments shall not be resorted to for any such apportioned part forming part of the entire or continuing rent specifically, but the entire or continuing rent, including such apportioned part, shall be recovered and received by the heir or other person, who, if the rent had not been apportionable under this Act, or otherwise, would have been entitled to such entire or continuing rent; and such apportioned part shall be recoverable by action from such heir or other person by the executors or other persons entitled under this Act to the same. 1 Geo. V. c. 21, s. 6.

Policies
of assurance.
Imp. Act 33-
34, V. c. 35,
s. 6.
Stipulation
against ap-
portionment.
Ibid, s. 7.

7. Nothing in the preceding provisions shall render apportionable any annual sums made payable in policies of assurance of any description, or extend to any case in which it is expressly stipulated that no apportionment shall take place. 1 Geo. V. c. 21, s. 7.

4. *PROFESSION OF THE LAW.*

CHAPTER 157.

An Act respecting the Law Society of Upper Canada.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Law Society Act*. 2 Geo. Short title.
V. c. 26, s. 1.

2. In this Act, “The Society” shall mean “The Law Interpreta-
tion. Society of Upper Canada.” 2 Geo. V. c. 26, s. 2.

LAW SOCIETY CONTINUED.

3. The Treasurer and Benchers of the Society, and their Name. successors, shall continue to be a body corporate and politic, by the name of “The Law Society of Upper Canada,” and may purchase, take and possess, for the purposes of the Society but for no other purpose, and after acquiring the Power as to
real estate. same may sell, mortgage, lease or dispose of any real estate. 2 Geo. V. c. 26, s. 3.

4. The Annual Terms of the Society shall be: Annual
terms.

(a) Hilary Term, which shall commence on the first Monday in February and end on Saturday in the ensuing week;

(b) Easter Term, which shall commence on the third Monday in May and end on the fourth Saturday thereafter;

(c) Trinity Term, which shall commence on the second Monday in September and end on Saturday of the ensuing week;

(d) Michaelmas Term, which shall commence on the third Monday in November and end on the third Saturday thereafter. 2 Geo. V. c. 26, s. 4.

5. The Judges of the Supreme Court shall be Visitors of Visitors. the Society. 2 Geo. V. c. 26, s. 5.

Members.

6. Members of the Bar of Ontario, and persons admitted to the Society as Students at Law, shall be members of the Society. 2 Geo. V. c. 26, s. 6.

ELECTION OF BENCHERS.

Ex-officio
Benchers.

7.—(1) The following, if and while continuing members of the Bar of Ontario, shall, *ex-officio*, be Benchers of the Society:

Minister of
Justice and
Solicitor-
General of
Canada.

(a) The Minister of Justice, the Solicitor-General of Canada, and every person who has held either of those offices;

Attorney
General of
Ontario.

(b) The Attorney General of Ontario, and every person who has held that office;

Treasurer
for seven
years.

(c) Every person who has for seven consecutive years held the office of Treasurer of the Society;

Benchers
four times
elected.

(d) Every person who has been elected a Bencher at four quinquennial elections.

Retired
Judges.

(2) So long as he does not practise as a Barrister or Solicitor, and is in receipt of an annuity granted under *The Judges' Act* (Canada),

R.S.C. 1906,
c. 138.

(a) Every retired Judge of the Supreme Court of Canada or of the Exchequer Court of Canada who was at the time of his appointment a member of the Bar of Ontario; and

(b) Every retired Judge of the Supreme Court of Judicature for Ontario

shall be *ex-officio* a Bencher of the Society.

Existing
rights pre-
served.

(3) Nothing herein shall affect the right of any one who has heretofore been held to be a retired Judge, and who is now *ex-officio* a Bencher. 2 Geo. V. c. 26, s. 7.

Elective
Benchers.

8. The Benchers, exclusive of the *ex-officio* members, shall be thirty in number, and shall be elected from the members of the Bar as hereinafter provided. 2 Geo. V. c. 26, s. 8.

Appointment
of scrutineers.

9.—(1) The Benchers shall, during the Term next preceding an election, appoint, with their assent, two members of the Bar, who, with the Treasurer, shall act as scrutineers at the election, and who shall not be eligible for election to the office of Bencher, and a third person, who shall be a member of the Bar and assist the Treasurer and act for him in his absence, in counting the votes.

Temporary
vacancies.

(2) The Treasurer may fill any vacancy in the office of scrutineer, and if he sees fit may appoint temporarily any qualified person to act as substitute for any scrutineer or other person appointed during the absence of such person. 2 Geo. V. c. 26, s. 9.

10.—(1) An election shall be held on the first Thursday after the second Wednesday in April, 1916, and the subsequent elections shall be held on the first Thursday after the second Wednesday in April of every fifth year thereafter; but if the scrutineers are unable to complete the scrutiny upon such day, the same shall be continued from day to day until the election is declared. Election, when to be held.

(2) If any scrutineer is absent during the scrutiny the others may proceed therewith. 2 Geo. V. c. 26, s. 10. Absence of scrutineer.

11. Every person who is a member of the Bar in good standing and not in arrears for fees to the Society shall be an elector qualified to vote for 30 persons for Benchers pursuant to this Act. 2 Geo. V. c. 26, s. 11. Who may vote and for whom.

12.—(1) The Secretary shall, on the first day of Hilary Term previous to the time for holding an election, make out and sign an alphabetical list of the members of the Bar who are entitled to vote at such election. List of voters.

(2) Such list may be examined by any member of the Bar at all reasonable times at the office of the Secretary, and if, within five days before the last day of such term, a member of the Bar complains to the Secretary, in writing, of the improper omission or insertion of any name in the list, the Secretary shall forthwith examine into the complaint and rectify the error if any there be. Complaints of errors in the list.

(3) If any person is dissatisfied with the decision of the Secretary, he may appeal to the scrutineers, whose decision shall be final, and the list shall remain or be altered in accordance with their decision, and the list as it stands on the fifth day of March shall be signed by the Secretary and scrutineers and shall be the settled list of persons entitled to vote at the election. Appeal to scrutineers. Finality of list.

(4) The Secretary shall add to the list the names of all persons called to the Bar during the term next preceding the election; and no alteration shall be made in the list except as provided in this section. 2 Geo. V. c. 26, s. 12. Adding persons called to the Bar in term preceding.

13. No person shall be eligible as a Benchers at any election who is not qualified to vote at the election. 2 Geo. V. c. 26, s. 13. Qualifications of Benchers.

14. At all elections retiring Benchers shall be eligible for re-election. 2 Geo. V. c. 26, s. 14. Retiring Benchers eligible.

15.—(1) No person shall be elected as a Benchers unless he has been nominated as hereinafter mentioned, and every vote cast for any person not so nominated shall be void. Nomination required.

(2) The nomination shall be in writing by a nomination paper, which shall be signed by at least ten of the persons entitled to vote at the election. Nomination paper.

Delivery.

(3) The nomination paper shall be delivered at the office of the Secretary or sent by mail to him, so as to be received during the first fifteen days of the month of March of the year in which the election is to take place, and if not so delivered or received shall be invalid and shall not be acted upon.

Notice to nominee.

(4) The Secretary shall, within the first four days after the last day for the receipt of nomination papers, mail notice in writing to each nominee informing him of his nomination, but the failure to mail such notice or the non-receipt thereof by the nominee shall not invalidate the election.

Declining nomination.

(5) Any person who is nominated may refuse to become a candidate, and he shall be deemed not to have been so nominated and his name shall not be included in the list of candidates if he notifies the Secretary in writing of his refusal within four days after the mailing of such notice to him.

Election by acclamation.

(6) If the number of persons who remain as candidates is not greater than the number of Benchers to be elected they shall be elected Benchers. 2 Geo. V. c. 26, s. 15.

Proceedings in case of poll.

16. In case a poll is necessary the Secretary shall forthwith, after the time for receiving notice of refusal to be a candidate has expired, send to each member of the Bar, whose name is on the alphabetical list mentioned in section 12, if his residence is known to the Secretary, one copy of the form of voting paper with a list of the persons who remain as candidates pursuant to section 15, in such manner and at such time before the holding of the election as may be determined by the Benchers, and the list shall indicate by asterisks and a footnote those whose term of office as Benchers is about to expire. 2 Geo. V. c. 26, s. 16.

Voting papers.

When voting papers to be delivered.

17. The votes shall be given by closed voting papers, Form 1, delivered at the office of the Secretary or sent by mail to him so as to be received thereat not later than the second Wednesday of April of the year of the election. 2 Geo. V. c. 26, s. 17.

Counting the votes.

18. Beginning on the first Thursday after the second Wednesday in April and proceeding continuously thereafter, except on holidays, the voting papers shall be opened by the Secretary in the presence of the Treasurer or the person appointed to assist him, and of the scrutineers who shall scrutinize and count the votes and keep a record thereof in a book to be provided by the Society. 2 Geo. V. c. 26, s. 18.

Void vote.

19. A vote cast for any person who is ineligible to be a Bencher or who is a Bencher *ex-officio* shall be null and void; and the election shall be declared as if such vote had not been cast. 2 Geo. V. c. 26, s. 19.

20. In the event of a voter placing more than thirty names on his voting paper the first thirty only shall be counted, notwithstanding that any of the thirty persons so named may be ineligible for election. 2 Geo. V. c. 26, s. 20. Voting for more than thirty members.

21. If an equality of votes between two or more persons leaves the election of one or more Benchers undecided the scrutineers shall forthwith put into a ballot-box a number of papers with the names of the candidates having such equality of votes written thereon, one for each candidate, and the Secretary shall draw by chance from the ballot-box, in the presence of the scrutineers, one or more of such papers sufficient to make up the required number, and the persons whose names are upon the papers so drawn shall be declared to have been elected as Benchers. 2 Geo. V. c. 26, s. 21. Equality of votes.

22.—(1) The thirty persons who have the highest number of votes shall be declared by the Secretary to have been elected as Benchers for the ensuing term of five years. Who to be declared elected.

(2) If among the thirty persons who have the highest number of votes there is any Bencher who by virtue of such election becomes *ex-officio* a Bencher, the scrutineers shall so report and, subject to the provisions of section 19, the thirty other persons having the highest number of votes shall be declared to have been elected as Benchers for the ensuing term of five years. 2 Geo. V. c. 26, s. 22. Where ex-officio Bencher is elected.

23. Any person entitled to vote at any such election shall be entitled to be present at the counting of the votes. 2 Geo. V. c. 26, s. 23. Who may be present at the counting of votes.

24. If from any cause any election provided for by this Act is not held as hereinbefore provided the Benchers in Convocation shall make provision for holding the same and fix the dates for the nomination and the other proceedings for taking, counting and recording the votes thereat and declaring the result thereof, and such proceedings shall, so far as practicable, be conformable with those provided by this Act. 2 Geo. V. c. 26, s. 24. When election not held at proper time.

25. Upon the completion of the scrutiny and counting of the votes the Secretary shall forthwith declare the result of the election as certified by the scrutineers and report the same to the Society, and shall cause the names of the persons elected to be published in the next issue of the *Ontario Gazette*. 2 Geo. V. c. 26, s. 25. Declaration of result. Publication.

26. The Benchers may make such regulations as they consider expedient, not contrary to the provisions of this Act, for regulating the procedure under the preceding sections, and for the remuneration of the scrutineers. 2 Geo. V. c. 26, s. 26. Regulations for elections and remuneration to scrutineers.

Preservation
of voting
papers.

27. Until after all petitions in respect to the election have been decided the voting papers relating to the election shall not be destroyed, but together with all other papers in connection with the election, shall be retained by the Secretary. 2 Geo. V. c. 26, s. 27.

False
voting.

28. No person shall sign the name of any other person to a voting paper, or alter, or add to, or falsify, or fill up any blank in a voting paper signed by another person, or deliver or cause to be delivered, or send or cause to be sent, by post or otherwise, to the Secretary, a false voting paper or a voting paper which has been added to, or falsified or in which a blank has been filled up after the same was signed. 2 Geo. V. c. 26, s. 28.

Absence of
Secretary.

29. Where the office of Secretary is vacant or if the Secretary is unable from any cause to act at or in connection with an election, the Treasurer shall appoint under his hand some other person to act as Secretary *pro tempore*, and the person so appointed shall perform all the duties of the Secretary, as prescribed by this Act. 2 Geo. V. c. 26, s. 29.

Term of
office of
Benchers.

30. The elected Benchers shall take office on the first day of Easter Term following their election, and, subject to the provisions of this Act, shall hold office until the beginning of the fifth Easter Term after they have entered on their office. 2 Geo. V. c. 26, s. 30.

Vacation of
seat for non-
attendance.

31.—(1) The seat of a Bencher, other than an *ex-officio* Bencher, who has failed to attend the meetings of the Benchers for four consecutive Terms shall at the expiration of that period *ipso facto* become vacant.

Suspension
of certain
ex-officio
Benchers for
non-payment
of fees.

(2) The right of any Bencher who is such *ex-officio* by reason of having been elected at four quinquennial elections, to sit and vote at meetings of the Benchers, shall be suspended if and while he is in default in payment of any fees to the Society. 2 Geo. V. c. 26, s. 31.

Committee
on election
petitions.

32. The Benchers at any meeting in the first Easter Term after the election may appoint a committee to inquire with respect to the due election of any Bencher whose election may be petitioned against by any member of the Bar who voted at the election, and, after such inquiry, to report such Bencher as duly or not duly elected or qualified according to the fact, and, if necessary, to report the name of the candidate having the highest number of votes next after the candidate declared elected who had the lowest number of votes, in lieu of the person reported not duly elected or qualified; and, on the confirmation of the report by the Benchers, other than persons petitioned against, present at any meeting called for that purpose, the person so reported in lieu of the person petitioned against shall be deemed to be the duly elected and qualified Bencher. 2 Geo. V. c. 26, s. 32.

33.—(1) A petition shall not be entertained unless it is filed with the Secretary at least ten days before the first day of Easter Term next succeeding the election, and contains a statement of the grounds on which the election is disputed, nor unless a copy thereof is served upon the Benchers whose election is disputed at least ten days before the first day of such Term; and no ground not mentioned in the petition shall be entertained on the hearing thereof.

Time for
filing election
petition.

Contents of
petitions.

(2) The Benchers, or the committee appointed for that purpose, shall, during the first week of such Term, appoint a day for the hearing of the petition and give notice of such day to the petitioner and to the person whose election is disputed, and all such petitions shall be finally disposed of during such Term. 2 Geo. V. c. 26, s. 33.

Hearing
petitions.

34. The petitioner shall deposit with the Secretary \$100 to meet any costs which the Benchers petitioned against may be put to; and the committee shall have power in the event of such petition being dismissed to award such a sum to be paid to the Benchers petitioned against as in their opinion is just and shall have power in their discretion, in the event of it being decided that such Benchers was not duly elected or qualified, to award costs to the petitioner; and the costs so awarded shall be recoverable in any court of competent jurisdiction. 2 Geo. V. c. 26, s. 34.

Deposit for
costs.

Power of
committee
as to costs.

35.—(1) The Benchers shall, at their first meeting after the election, elect one of their number as Treasurer, who shall be the President of the Society, and shall hold office until the appointment of his successor; and the election of Treasurer shall take place in each year thereafter at such time as may be appointed by the Rules of the Society.

Election of
Treasurer.

Duration of
his office.

(2) The retiring Treasurer shall be eligible for re-election. 2 Geo. V. c. 26, s. 35.

Retiring
Treasurer
eligible.

36. In case of failure to elect the requisite number of duly qualified Benchers under the provisions of this Act, or in case of any vacancy owing to the death or resignation of any Benchers, or to any other cause, the remaining Benchers shall, with all convenient speed, at a meeting to be specially called for the purpose, to be held during the next Term thereafter, supply the deficiency in the number of Benchers, or fill the vacancy by electing any person or persons duly qualified under the provisions of this Act; and the person or persons so elected shall hold office until the beginning of the first Easter Term after the next quinquennial election. 2 Geo. V. c. 26, s. 36.

Vacancies
among
Benchers,
how filled up

POWERS OF THE BENCHERS.

37. The Benchers may make rules for the government of the Society, and other purposes connected therewith under the inspection of the Visitors. 2 Geo. V. c. 26, s. 37.

Power to
make rules.

Abolition of
Terms and
changing
dates for doing
acts or giving
notices.

38. The Benchers may by rule abolish Terms and fix or change the dates for the doing of any act, or the giving of any notice which by this Act is to be done or given in or with reference to any Term, but no such rule shall have the effect of prolonging the term of office of any elected Benchers. 2 Geo. V. c. 26, s. 38.

Power to
summon and
examine
witnesses.

39. On the hearing of an election petition or upon any inquiry by a committee the Benchers or committee shall have power to examine witnesses under oath, and a summons under the hand of the Treasurer, or under the hands of three Benchers, for the attendance of a witness shall have all the force of a subpoena; and any witness not attending in obedience thereto shall be liable to attachment in the Supreme Court. 2 Geo. V. c. 26, s. 39.

Appointment
of officers.

40. The Benchers may appoint such officers and servants as they may deem necessary for the purposes of the Society. 2 Geo. V. c. 26, s. 40.

Appointment
of examiners.

41. The Benchers may appoint examiners to conduct the examination of students at law and articled clerks and of persons applying to be called to the Bar or to be admitted as solicitors. 2 Geo. V. c. 26, s. 41.

Legal
education.

42. The Benchers may make rules for the improvement of legal education including the establishment and maintenance of a Law School; appoint readers and lecturers with salaries; impose fees and prescribe rules for the attendance of students and articled clerks and others at readings or lectures and for examinations thereon, but not so as to reduce the number of years prescribed by statute for call to the Bar or admission as solicitor, and may establish scholarships and prizes in connection therewith. 2 Geo. V. c. 26, s. 42.

Call to the
Bar.

43.—(1) The Benchers may make such Rules as they consider necessary for conducting the examination of persons applying to be called to the Bar and may call and admit to the practice of the law as a Barrister any person duly qualified to be so called and admitted according to the provisions of law and the rules of the Society.

Admission of
women.

(2) The Benchers may in their discretion make rules providing for the admission of women to practise as Barristers and Solicitors. 2 Geo. V. c. 26, s. 43.

Rules for
examination
of candidates
for admission
as solicitors.

44.—(1) The Benchers with the approbation of the Visitors may make such rules as they consider necessary for conducting the examination of persons applying to be admitted as Solicitors, touching the articles and service, and the certificates required by law to be produced by them before their admission, and as to the fitness and capacity of such persons to act as Solicitors.

(2) Where it appears to the Benchers expedient for purposes of further inquiry or investigation, they may suspend, for a period not exceeding twelve months, their final decision in respect to granting or refusing a certificate. 2 Geo. V. c. 26, s. 44.

Suspending decision.

45. The Benchers may make rules and regulations, not contrary to law, and dispense therewith from time to time to meet the special circumstances of any special case respecting

Rules and regulations to meet special circumstances.

(a) the admission of students-at-law, the periods and conditions of study, the call or admission of Barristers to practise the law, and all other matters relating to the discipline and honour of the Bar;

Admission of students and call of barristers.

(b) the service of articled clerks, the period and conditions of such service, and the admission of Solicitors to practise in the Courts, and all other matters relating to the discipline and conduct of Solicitors and articled clerks. 2 Geo. V. c. 26, s. 45.

Articled clerks and admission of solicitors.

46. Where a Barrister, Solicitor, Student-at-Law or articled clerk is found by the Benchers, after due inquiry by a committee of their number or otherwise, guilty of professional misconduct, or of conduct unbecoming a Barrister, Solicitor, Student-at-Law, or articled clerk, the Benchers may disbar any such Barrister, or suspend him from practising as a Barrister for such time as they may deem proper; may resolve that any such Solicitor is unworthy to practise as a Solicitor or that he should be suspended from practising for a period to be named in the resolution; may expel from the Society, and the membership thereof, such student or articled clerk and strike his name from the books of the Society; and may refuse either absolutely or for a limited period to admit such articled clerk to the usual examinations, or to grant him the certificate of fitness necessary to enable him to be admitted to practice. 2 Geo. V. c. 26, s. 46.

Powers of Benchers to suspend, disbar or expel in case of misconduct.

47. Upon a Barrister being disbarred, all his rights and privileges as a Barrister shall thenceforth cease and determine, or, in case he is suspended, he shall, during the period of his suspension, possess no rights or privileges as a Barrister, and notice of his being disbarred or suspended shall forthwith be given by the Secretary to the Senior Registrar of the High Court Division. 2 Geo. V. c. 26, s. 47.

Barrister's privileges to cease when he is disbarred.

48.—(1) Where it has been resolved by the Benchers that a Solicitor is unworthy to practise a copy of the resolution shall forthwith be communicated to the Senior Registrar of the High Court Division; and thereupon, without any formal motion, an order of the Supreme Court may be drawn up striking such Solicitor off the roll, but he may, at 107 s.

Striking off the Rolls.

any time afterwards upon application to the Court, be restored to practice.

Suspension of
solicitor,
notification of.

(2) Where it has been resolved by the Benchers that a Solicitor should be suspended from practising for a period named in the resolution a copy of the resolution shall be forthwith communicated to the Senior Registrar of the High Court Division; and thereupon, without any formal motion, an order of the Supreme Court may be drawn up suspending such Solicitor from practising for such period. 2 Geo. V. c. 26, s. 48.

Powers of
visitors as to
discipline
vested in
the Benchers.

49. Any powers which the Visitors of the Society may have in matters of discipline are hereby vested in the Benchers, and the powers by the next preceding three sections conferred upon the Benchers may be exercised by them without reference to or the concurrence of the Visitors. 2 Geo. V. c. 26, s. 49.

COUNTY LAW LIBRARIES.

Rules as to
county law
libraries.

50. The Benchers may make regulations for promoting the efficiency of County Law Libraries, and may prescribe and enforce remedies for the violation thereof, and may by resolution of Convocation cause to be dissolved any County Law Library Association which neglects or refuses to comply with such rules or regulations. 3-4 Geo. V. c. 31, s. 1.

LAW BENEVOLENT FUND.

Widows'
and orphans'
fund.

51. The Benchers may establish a fund for the benefit of the widows and orphans of Barristers and Solicitors, to be called "The Law Benevolent Fund," and may make all necessary rules and regulations for the management and investment of such fund, and the terms of subscription and appropriation thereof, and the conditions under which such widows and orphans shall be entitled to share in such fund. 2 Geo. V. c. 26, s. 50.

REPORTERS.

Appointment
of law
reporters.

52.—(1) The Benchers may appoint such person or persons, being members of the Society of the degree of Barrister, as they may think proper to report and edit the decisions of the Courts.

Tenure of
office.

(2) Such person or persons shall hold office at the pleasure of the Benchers, and shall be amenable to them in Convocation, for the correct and faithful discharge of their duties according to such regulations as the Benchers may make in respect thereof.

Benchers to
make regula-
tions regard-
ing the
reports.

(3) The Benchers shall make regulations for printing and publishing the reports of such decisions, and the distribution of the reports and the price and mode of issuing the same, and all such other regulations in respect thereto as they may

at any time consider necessary; and any profits arising from the reports shall form part of the general funds of the Society.

(4) The Benchers shall determine the salaries to be ^{Salaries of} ~~Salaries of~~ reporters. out of the general funds of the Society. 2 Geo. V. c. 26, s. 51.

REVENUE AND EXPENDITURE.

53. The fees payable by Barristers on call to the Bar and ^{Appropriation} ~~of certain~~ fees. annually, and by Solicitors on admission, and for the annual certificate to practise, and by students and articled clerks on admission as such, and by them and others on examinations and attendance on lectures and readings, shall be paid into the general funds of the Society, and shall be such as the Benchers may prescribe. 2 Geo. V. c. 26, s. 52.

54. The Society shall, during Hilary Term in every year, ^{Annual} ~~financial~~ statement. furnish to every member of the Society entitled to vote at the election of Benchers a statement in detail of the revenue and expenditure of the Society, for the year ending on the next preceding 31st day of December, the same to be first duly audited by an auditor appointed by the Benchers to audit the accounts and report upon the finances of the Society. 2 Geo. V. c. 26, s. 53.

SCHEDULE.

FORM 1.

(Section 17.)

VOTING PAPER.

Law Society Election, 19

The appointed scrutineers for this election are Mr. of
 , and Mr. of
 I, , of the in the of
 , Barrister, do hereby declare—

1. That the signature hereto is in my proper handwriting.

2. That I vote for the following persons as Benchers of the Law Society:

A.B., of , in the of

C.D., of , in the of
 etc. etc.

3. That I have signed no other voting paper at this election.

4. That this voting paper is signed on the day of the date thereof.

Witness my hand, this day of , 19 .

2 Geo. V. c. 26, Sched.

CHAPTER 158.

An Act respecting Barristers-at-Law.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Barristers Act*. 2 Geo. V. c. 27, s. 1.

Interpretation.
"The Society."

2. In this Act "The Society" shall mean The Law Society of Upper Canada. 2 Geo. V. c. 27, s. 2.

Who may be admitted to practise at the Bar.

3. Subject to any rules, regulations or by-laws made by the Benchers of the Society under *The Law Society Act* the following persons, being British subjects, and, except as hereinafter provided, no others, may be admitted to practise at the Bar in His Majesty's Courts in Ontario:—

Students of five years' standing.

(a) Any person of the age of twenty-one years, who, having been entered of and admitted into the Society as a student of the laws, has been standing on the books thereof for five years, and has conformed to the rules of the Society;

Certain students of three years' standing.

(b) Any person of the age of twenty-one years, who has been admitted into and stands on the books of the Society as a student of the laws for three years, and has conformed to the rules of the Society, and, who prior to the date of his admission as a student, has actually taken and had conferred upon him the degree of Bachelor of Arts, Bachelor of Civil Law or Bachelor of Law in any of the Universities of the United Kingdom or of any of His Majesty's Dominions or Colonies, or any University or College in any of the Provinces of Canada having power to grant degrees, or who was a graduate of the Royal Military College of Canada, or who was a graduate of the faculty of Applied Science of the University of Toronto, or in Practical Science of Queen's University of Kingston.

Admission of English and other barristers.

(c) Any person who has been duly called to the Bar of any of His Majesty's Superior Courts of England, Ireland or Scotland,—when the Inn of Court or other authority having power to call or admit to the Bar by which such person was

called or admitted extends the like privilege to members of the Bar of Ontario—on producing sufficient evidence of such call or admission and testimonials of good character and conduct to the satisfaction of the Society;

- (d) Any person who has been duly authorized to practise as an Advocate, Barrister, Attorney, Solicitor and Proctor at Law in all Courts of Justice in Quebec, or who has been found capable and qualified, and entitled to receive a diploma for that purpose under the provisions of the Acts respecting the incorporation of the Bar of Quebec, or who has been duly registered as a clerk and studied during the periods for study respectively required under the provisions of those Acts, on producing sufficient evidence thereof, and testimonials of good character and conduct to the satisfaction of the Society, and undergoing an examination in the law of Ontario to its satisfaction, and upon his entering himself of the Society, and conforming to all the rules thereof;

Admission of
practitioners
and students
from Quebec.

- (e) Any person who has been duly called or admitted or is entitled to be called or admitted, to the Bar of any of His Majesty's Superior Courts in any of the Provinces of Canada or of any British Dominion or colony in which the same privilege would be extended to members of the Bar of Ontario, and who produces sufficient evidence of such call or admission, or of the right to be called or admitted, and testimonials of good character and conduct to the satisfaction of the Society.
2 Geo. V. c. 27, s. 3.

Admission of
Barristers of
other Pro-
vinces and
Colonies.

4.—(1) Persons who had been duly admitted and enrolled as Solicitors of the Supreme Court, and who have practised as Solicitors in Ontario for the periods respectively herein-after mentioned, and who are British subjects, may be admitted to practise at the Bar of His Majesty's Courts in Ontario on the terms and conditions hereinafter mentioned.

Admission of
solicitors to
practise at
the Bar.

(2) A Solicitor who has been, previous to the time of filing his application for call, in actual practice for ten years or more shall be entitled to be called to the Bar without further examination.

When solicitor
has practised
for ten
years.

(3) A Solicitor who has been, previous to the time of filing his application for call, in actual practice for five years or more, but less than ten years, shall be entitled to be called on passing such examination as may be required by the Society for such cases.

When solicitor
has practised
for five
years.

Solicitors
holding office
in Superior
Court.

(4) For the purpose of this section a Solicitor holding any office in the Supreme Court or either division thereof to which he is appointed by the Crown, shall be deemed to have been in actual practice within the meaning of this Act while holding such office.

Notice of
application
by such
candidates.

(5) Notice of the intention of a candidate to apply for call, under the provisions of this section, shall be sufficient if written notice be given to the Secretary of the Society as in the case of a student-at-law for call; and the notice of presentation to convocation shall be signed by a Barrister practising in the county or district in which such candidate resides, and shall certify that the candidate is, in his opinion, a fit and proper person to be called to the Bar.

Fees.

(6) Every such Solicitor, before being called to the Bar, shall pay such fees only as are paid on call to the Bar in ordinary cases. 2 Geo. V. c. 27, s. 4.

Call of
Minister of
Justice or
Solicitor
General.

5. Any person who is or has been Minister of Justice of Canada or Solicitor General of Canada shall be entitled to be called to the Bar of Ontario without complying with any of the rules of the Society as to admission, examinations, payment of fees or otherwise, and shall thereupon be entitled to practise at the Bar in His Majesty's Courts in Ontario. 2 Geo. V. c. 27, s. 5.

KING'S COUNSEL AND PRECEDENCE.

Appointment
of King's
Counsel.

6. It was and is lawful for the Lieutenant-Governor, by Letters Patent under the Great Seal, to appoint from the members of the Bar of Ontario such persons as he may deem proper to be, during pleasure, Provincial officers under the name of His Majesty's Counsel learned in the Law for Ontario. 2 Geo. V. c. 27, s. 6.

Limit as to
number of
King's
Counsel
to be
appointed.

7.—(1) From and after the time when this section comes into force no appointment of His Majesty's Counsel learned in the Law shall be made by the Lieutenant-Governor in Council beyond the number of five in any one year, or twenty in any four years, save and except in the following cases:—

Exceptions.

(a) That of any person who may be appointed Minister of Justice or Solicitor General of Canada, or Attorney General of Ontario;

(b) That of any person appointed by the Governor-General in Council, for the Federal Courts, one of His Majesty's Counsel learned in the Law.

Qualifications
of King's
Counsel.

(2) Except in the cases mentioned in clauses (a) and (b) no person shall be so appointed who is not of at least ten years' standing at the Bar of Ontario.

(3) This section shall not come into force until a day to be named by the Lieutenant-Governor by his proclamation. When this section shall come into force.
 2 Geo. V. c. 27, s. 7.

8. The following members of the Bar of Ontario shall have precedence in the Courts of Ontario in the following order:— Order of precedence at the Bar.

- (a) The Minister of Justice of Canada for the time being;
- (b) The Attorney General of Ontario;
- (c) The members of the Bar who have filled the office of Minister of Justice of Canada or Attorney General of Ontario, according to seniority of appointment;
- (d) The members of the Bar who were, before the 1st day of July, 1867, appointed Her Majesty's Counsel for Upper Canada, according to seniority of appointment. 2 Geo. V. c. 27, s. 8.

9. The Lieutenant-Governor, by Letters Patent under the Great Seal, may grant to any member of the Bar a patent of precedence in the Courts of Ontario. Patents of precedence. 2 Geo. V. c. 27, s. 9.

10. Members of the Bar appointed after the 1st day of July, 1867, to be Queen's Counsel or King's Counsel for Ontario, and members of the Bar to whom patents of precedence are granted shall severally have precedence in the courts according to seniority of appointment unless otherwise provided in the Letters Patent. Precedence of King's Counsel and members holding patents of precedence. 2 Geo. V. c. 27, s. 10.

11. The remaining members of the Bar shall, as between themselves, have precedence in the Courts in the order of their call to the Bar. Precedence of other members of the Bar. 2 Geo. V. c. 27, s. 11.

12. Nothing in this Act shall affect or alter any rights of precedence which appertain to any member of the Bar when acting as Counsel for His Majesty, or for any Attorney General of His Majesty, in any matter depending in the name of His Majesty or of the Attorney General before the courts, but such right and precedence shall remain as if this Act had not been passed. Crown Counsel 2 Geo. V. c. 27, s. 12.

(Note.—As to collection of costs when solicitor or counsel paid a salary. See The Solicitors' Act, R.S.O. c. 159, s. 71.)

CHAPTER 159.

An Act respecting Solicitors.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Solicitors Act*. 2 Geo. V. c. 28, s. 1.

Interpretation.

2. In this Act,

"Rules of the society."

(a) "Rules of the Society" shall mean rules, regulations and by-laws made by the Benchers of the Society under *The Law Society Act*;

"The Society."

(b) "The Society" shall mean The Law Society of Upper Canada;

"Term,"
"Terms,"
Rev. Stat.
c. 157.

(c) "Term" and "Terms" shall mean the terms mentioned in *The Law Society Act*. 2 Geo. V. c. 28, s. 2.

PROHIBITION AGAINST PRACTISING WHEN UNQUALIFIED.

Solicitors
must be
admitted and
enrolled.

3. Unless admitted and enrolled and duly qualified to act as a Solicitor no person shall act as a Solicitor in any Court of civil or criminal jurisdiction or before any justice of the peace, or shall as such sue out any writ or process, or commence, carry on or defend any action, or proceeding in the name of any other person, or in his own name, or hold himself out as or represent himself to be a Solicitor. 2 Geo. V. c. 28, s. 3.

Penalty on
persons
practising
without
being admitted
as Solicitors.

4. If any person, unless himself a party to the proceeding, commences, prosecutes or defends in his own name, or that of any other person, any action or proceeding without having been admitted and enrolled as hereinafter provided, he shall be incapable of recovering any fee, reward or disbursements on account thereof, and shall be guilty of a contempt of the Court in which such proceeding was commenced, carried on or defended, and punishable accordingly. 2 Geo. V. c. 28, s. 4.

[As to practising in Division Courts, see *The Division Courts Act*, R.S.O. c. 63, s. 110, and as to proceedings to enforce claims of lienholders for sums not exceeding \$100, see *The Mechanics Lien Act*, R.S.O. c. 140, s. 37 (7).]

WHO MAY BE SOLICITORS.

5.—(1) All persons heretofore admitted as Solicitors or Attorneys of, or by law empowered to practise in any Court the jurisdiction of which is now vested in the Supreme Court shall be Solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as Solicitors or Attorneys were entitled or subject to prior to the 22nd day of August, 1881.

Solicitors
and
Attorneys
admitted.

(2) All persons who, if *The Ontario Judicature Act*, 1881, had not been passed, would have been entitled to be admitted as Solicitors or Attorneys of, or been by law empowered to practise in, any such Courts shall be entitled to be admitted on payment of the fees mentioned in section 16, and shall be so admitted by the Court, and when so admitted shall be Solicitors of the Supreme Court.

Persons en-
titled to be
admitted be-
fore 44 V.
c. 5.

(3) Solicitors to whom this section applies shall be officers of the Supreme Court; and that Court or either Division or any Judge thereof, may exercise the same jurisdiction in respect of such Solicitors as a Superior Court or a Judge thereof before the 22nd day of August, 1881, might have exercised in respect of any Solicitor or Attorney admitted to practise therein. 2 Geo. V. c. 28, s. 5.

Subject to
control of
court.

6. Subject to the provisions hereinafter contained and to any rules of the Society the following persons, being British subjects, and, except as hereinafter provided, no others, may be admitted and enrolled as Solicitors:—

Who may be
admitted and
enrolled.

(a) Any person of the age of twenty-one years who has been bound by contract in writing to a practising Solicitor in Ontario to serve and has served him as his clerk for five years;

Articled
clerks after
five years'
service.

(b) Any person of the age of twenty-one years who being bound by contract in writing to a practising Solicitor in Ontario to serve him has served him as his clerk for three years and who, before being so bound, has actually taken and had conferred upon him the degree of Bachelor of Arts, Bachelor of Civil Law, or Bachelor of Law, in any of the Universities of the United Kingdom, or any of His Majesty's Dominions or Colonies, or in any University or College in any of the Provinces of Canada having power to grant degrees, or was a graduate of the Royal Military College of Canada or of the Faculty of Applied Science in the University of Toronto or in Practical Science of Queen's University of Kingston;

Graduates
of Universities
after three
years' service.

Barristers of
Ontario or
England,
Scotland or
Ireland after
three years' service.

(c) Any person who has been duly called to the Bar of Ontario, or of any of the other Provinces of Canada, or of any British Dominion or Colony, or who has been duly called to the Bar of any of His Majesty's Superior Courts in England, Ireland or Scotland, not having merely local jurisdiction, and has been thereafter bound by contract in writing to a practising Solicitor in Ontario to serve and has served him as his clerk for three years;

Solicitors of
Courts of
England,
Scotland or
Ireland after
one year's
service.

(d) Any person who has been duly sworn, admitted and enrolled a Solicitor of His Majesty's Supreme Court of Judicature in England or Ireland, or who has been Writer to the Signet or Solicitor of the Supreme Courts in Scotland, and has been thereafter bound by contract in writing to a practising Solicitor in Ontario to serve and has served him as his clerk for one year;

Solicitors of
Courts in
Colonies
after one
year's service.

(e) Every person who has been duly sworn, admitted and enrolled as an Attorney or Solicitor of any of His Majesty's Superior Courts of Law or Equity in any Province of Canada or in any of His Majesty's Dominions or Colonies, and who has been thereafter bound by contract in writing to a practising Solicitor in Ontario to serve and has served him as his clerk for such period not exceeding one year, as may be prescribed by the Rules of the Society. 2 Geo. V. c. 28, s. 6.

Admission of
certain
practising
barristers as
solicitors.

7.—(1) Any person who has been duly called to the Bar of Ontario, and who has practised as a Barrister in Ontario for the periods respectively hereinafter mentioned, may be admitted and enrolled as a Solicitor on the terms and conditions hereinafter mentioned.

Of ten years' standing.

(2) Where, previous to the time of filing his application for a certificate of fitness, he has been in actual practice for ten years or more he shall be entitled to such certificate without any examination.

Of five years' standing.

(3) Where, previous to the time of filing his application for certificate for fitness, he has been in actual practice for five years or more, but for less than ten years, he shall be entitled to the certificate on passing such examination as may be prescribed by the Society for such cases.

Notice of
application
for certificate
of fitness.

(4) Notice of the intention of the candidate to apply for a certificate of fitness under the provisions of this section shall be in writing signed by the applicant, and shall be given by him to the Secretary of the Society at least fourteen days before the first day of the Term in which such candidate seeks admission; and the application for the certificate shall

be signed by a Barrister practising in the county or district in which such candidate resides, who shall certify that the candidate is, in his opinion, a fit and proper person to be admitted and enrolled as a Solicitor.

(5) Every such Barrister, before obtaining the certificate, ^{Fees.} shall pay such fees only as are payable by an articled clerk in ordinary cases of being admitted as a Solicitor. 2 Geo. V. c. 28, s. 7.

8. The Society may in its discretion grant a certificate of fitness to any person who was called to the Bar of Ontario before the 1st day of January, 1891, on his passing the usual examination prescribed for admission to practice as a Solicitor and paying the usual fees. 2 Geo. V. c. 28, s. 8. ^{Issue of certificate of fitness to Barristers in certain cases.}

9. A person who has been called to the Bar of Ontario under the provisions of clause (d) of section 3 of *The Barristers Act* shall be entitled to be admitted and enrolled as a Solicitor on paying the usual fees. 2 Geo. V. c. 28, s. 9. ^{Barristers of Quebec who have been called to the Bar of Ontario.}

SERVICE OF ARTICLED CLERKS.

10. Subject to the rules of the Society under *The Law Society Act*, the following enactments are made with respect ^{Articled clerks.} to the service of articled clerks:—

- (a) The contract of service of an articled clerk and any assignment thereof, together with the affidavit of execution of such contract or assignment, which shall state the date of such execution, shall be filed within three months after the execution thereof respectively, in the Central Office of the Supreme Court and the proper officer shall endorse upon each document and sign a memorandum of the date of filing thereof; ^{Contracts of service to be filed.}
- (b) If the contract of assignment with the affidavit of execution is not filed within three months after the date of the contract or assignment the same may nevertheless be filed, but the service of the clerk shall be reckoned only from the date of the filing, unless the Society, in its discretion for special reasons in any particular case, shall otherwise order; ^{Provision in case contract not filed in three months.}
- (c) A Solicitor may have under contract in writing four clerks at one time and no more; and no Solicitor shall have any clerk so bound after he has discontinued practice as a Solicitor, nor while the Solicitor is employed as a writer or clerk by any other Solicitor, and the service by an articled clerk to a Solicitor under any such circumstances shall not be deemed good service under the articles; ^{Practising solicitor may have four articled clerks and no more.}

Court may order articles to be discharged or assigned in certain cases.

(d) If a Solicitor, before the determination of the contract of service, becomes bankrupt or takes the benefit of any Act for the relief of insolvent debtors, or has been imprisoned for twenty-one days, the Supreme Court, upon the application of the clerk, may order that the contract be discharged or be assigned to such person, upon such terms, and in such manner as the Court may deem proper;

Case of death, etc., of the solicitor to whom clerk articulated.

(e) If a Solicitor, to whom a clerk has been so bound, dies before the expiration of the term for which the clerk became bound, or if he discontinues practice as a Solicitor, or if the contract is by the consent of the parties cancelled, or if the clerk is legally discharged before the expiration of the term by an order of the Court, the clerk may be bound by another contract in writing to serve as clerk to any other practising Solicitor during the residue of the term; and if an affidavit of the execution of such last mentioned contract is duly made and filed within the time and in the manner hereinbefore prescribed, and subject to the like regulations as in the case of the original contract and the affidavit of its execution, due service under such subsequent contract shall be sufficient. 2 Geo. V. c. 28, s. 10.

CONDITIONS OF ADMISSION AS SOLICITORS.

Provisions to be complied with before admission.

11.—(1) Subject to the rules of the Society no articulated clerk shall be admitted and enrolled as a Solicitor unless

- (a) during the time specified in his contract of service he has duly served thereunder, and, except while attending the courses of lectures at the Law School and undergoing examinations as prescribed by the Rules of the Society, he has been during the whole of such term of service actually employed in the proper practice of a Solicitor by the Solicitor to whom he has been bound at the place where such Solicitor has continued to reside, during such term or with his consent by the professional agent of the Solicitor in Toronto; and
- (b) he has been examined and sworn in the manner hereinafter directed; and
- (c) at least fourteen days next before the first day of the Term in which he seeks admission, he has left with the Secretary of the Society his contract of service, and any assignment thereof and the affidavits of the execution of the same with his affidavit of due service thereunder, and a certificate of the Solicitor to whom he was bound,

or his Toronto agent of such due service, and in the case of a person who has been called to the Bar or taken a degree as hereinbefore mentioned, a certificate of his having been so called or taken such degree or a duly certified copy of such certificate.

(2) The affidavits shall be in the form prescribed by the Society and approved by the Visitors of the Society, and shall be delivered by the applicant to the Society upon his application to be examined. Affidavits to be delivered to the Society.

(3) If the contract of service, assignment, if any, affidavits and certificate of due service, or any of them, cannot be produced the Society, on application by a petition verified by affidavit to be left with the Secretary at least fourteen days before the first day of the Term on which the applicant seeks admission, and on being satisfied of such fact may, in its discretion, dispense with the production of such contract, assignment, affidavits and certificate of due service, or any of them, and may, notwithstanding such non-production, grant the certificate of fitness. Provision in case the contract, etc., cannot be produced.

(4) The Benchers may allow an articled clerk, as part of his term of service, any time during which such clerk may have been employed in the Militia Service when the Militia are called out for actual service. 2 Geo. V. c. 28, s. 11. Time of clerk on militia service may be allowed.

ADMISSION AND ENROLMENT.

12. Subject to the rules of the Society:—

Requirements.

(a) Where the Benchers require that articled clerks shall pass a preliminary examination the term of service under articles to entitle an articled clerk to be admitted as a Solicitor shall date only from the passing of such examination or his admission into the Society as a student-at-law; Preliminary examination.

(b) No candidate for admission of either of the classes of persons mentioned in clauses (a) and (b) of section 6 shall be admitted or enrolled as a Solicitor unless he has complied with the regulations of the Society as to the attendance at lectures and the passing of examinations. 2 Geo. V. c. 28, s. 12. Attendance at lectures, examinations.

13.—(1) Subject to the rules of the Society no candidate for admission being of any of the classes of persons mentioned in clauses (c), (d) and (e) of section 6 shall be admitted unless Provisions respecting special cases.

(a) he publishes in the *Ontario Gazette* for at least two months previously to the first day of the term in which he seeks admission notice of his intention to apply for admission;

(b) nor, except in the case of a person who has been called to the Bar of Ontario, unless he, at least fourteen days before the first day of such Term, leaves with the Secretary of the Society,

(i) in the case of a Barrister, sufficient evidence to the satisfaction of the Benchers of his call to the Bar and an affidavit to their satisfaction stating whether any application is made or is pending to disbar him, disqualify him for misconduct, or otherwise from practising at the Bar;

(ii) in the case of an Attorney, Solicitor or Writer to the Signet, sufficient evidence to the satisfaction of the Benchers of his admission and an affidavit of the candidate to their satisfaction stating whether any application has been made or is pending to strike him off the Roll or disqualify him for misconduct or otherwise from practising as a Solicitor;

(iii) in every case testimonials of good character and conduct to the satisfaction of the Benchers.

Date of
affidavit.

(2) The affidavit shall be made within three months of the first day of the Term during which the application is made. 2 Geo. V. c. 28, s. 13.

The Law
Society to
examine into
the fitness
and capacity
of candidates
for admission
as solicitors.

Rev. Stat.
c. 157.

Certificate
of fitness.

14. The Benchers, upon proof to their satisfaction of the requirements of this Act having been complied with, shall examine and enquire by such ways and means as they think proper touching the fitness and capacity of any candidate for admission as a Solicitor; and if satisfied by such examination, or by the certificate of the examiners mentioned in section 41 of *The Law Society Act*, that the candidate is duly qualified, fit and competent to act as a Solicitor the Society shall give a certificate under its corporate seal of his due service, and of his fitness and capacity, and of his having duly complied with the requirements of this Act, and that he is in all respects qualified to be admitted as a Solicitor. 2 Geo. V. c. 28, s. 14.

Admission
and enrol-
ment.

15.—(1) Upon production to the Supreme Court of such certificate of fitness the presiding Judge shall endorse his fiat of admission upon it; and thereupon the oath of allegiance and the oath of office having been administered in open Court to the person named in the certificate the Court may cause him to be admitted and his name to be enrolled as a Solicitor.

Certificate of
admission.

(2) A certificate of admission shall be signed by one of the Registrars of the High Court Division, and the certificate of fitness shall be filed in the proper office of the Supreme Court.

(3) The oath of office shall be as follows:—

Oath of office.

“I, *A.B.*, do swear (or solemnly affirm as the case may be) that I will truly and honestly demean myself in the practice of a Solicitor according to the best of my knowledge and ability; So help me God.”

2 Geo. V. c. 28 s. 15.

FEES.

16. The following fees, and no other, shall be payable to the Crown under this Act:—

Fees payable under this Act.

1. On filing articles or assignments (if any) with affidavit of execution, and making the endorsements required by this Act. \$0 50
2. For fiat, admission, oath and certificate 5 50

2 Geo. V. c. 28, s. 16.

ANNUAL CERTIFICATES.

17. The officer of the Supreme Court who has the custody of the Roll of Solicitors shall, on the first day of every month, deliver to the Secretary of the Society at its office in Osgoode Hall, certified under his hand and the seal of the Supreme Court, a copy of so much of the Roll as contains the names of Solicitors admitted to practise during the preceding month. 2 Geo. V. c. 28, s. 17.

Names of those admitted to be delivered to Law Society monthly.

18. The Secretary shall enter all such certified copies in a book to be kept in his office for that purpose, affixing to each name a number following in consecutive order the numbers affixed to the names previously entered. 2 Geo. V. c. 28, s. 18.

Secretary to enter certified copies of Roll in a book.

19. The Secretary shall, in another book to be kept in his office for that purpose, enter all the names contained in the copies so transmitted to him, alphabetically arranged, with a reference to the number of each name on the Roll; and shall, annually on or before the 1st day of February, put up in his office and also in the Central Office of the Supreme Court an alphabetical list certified by him, under his hand, of all Solicitors who have taken out their certificates for the current year, and shall from time to time add to such list the name of each Solicitor who takes out a certificate at a subsequent period of the year, noting thereon the time when the certificate was taken out. 2 Geo. V. c. 28, s. 19.

Secretary to annually post an alphabetical list of solicitors in his office and in Central Office.

20. Every practising Solicitor whose name appears on the Roll of Solicitors shall obtain from the Secretary, annually during the two weeks next preceding the last day of Michaelmas Term, a certificate under the seal of the Society stating that he is a practising Solicitor of the Supreme Court. 2 Geo. V. c. 28, s. 20.

Annual certificate to be obtained by Solicitors.

Fees to be paid before certificate granted.

21. A certificate shall not be issued to a Solicitor who is indebted to the Society for any fee payable to the Society, nor until the annual fee for each certificate prescribed by the rules of the Society is paid. 2 Geo. V. c. 28 s. 21.

Certificate not required till Michaelmas after admission.

22. A Solicitor admitted in or after Michaelmas Term shall not be required to take out his annual certificate before Michaelmas Term next following his admission. 2 Geo. V. c. 28, s. 22.

Fine for neglect to take out certificate.

23. If a Solicitor omits to take out his annual certificate within the prescribed period he shall not be entitled thereto until he pays to the Society not only the prescribed certificate fee, together with any other fees which he owes to the Society, but also an additional sum by way of penalty, as follows:

Amount of fine.

If such certificate is not taken out before the first Monday in February, the sum of \$6; if not before the third Monday in May, the sum of \$9; and if not before the second Monday in September, \$12. 2 Geo. V. c. 28, s. 23.

Solicitors, etc., practising without certificate to forfeit \$40.

24. If a Solicitor, or any member of a firm of Solicitors, either in his own name or in the name of any member of his firm, practises in the Supreme Court or in either division thereof or in a County, or District Court, or in a Surrogate Court without such certificate being taken out by him, and by each member of his firm, he shall forfeit the sum of \$40, which shall be paid to the Society, and may be recovered in the Supreme Court. 2 Geo. V. c. 28, s. 24.

Further penalty for practising without a certificate.

25. If a Solicitor practises in any such Court without having taken out such certificate in each and every year of his practice he shall be liable to be suspended from practice by order of the Supreme Court for a period of not less than three nor more than six months, and shall continue so suspended until his certificate fee for the year in which he so practised, together with a penalty of \$40, is paid to the Society. 2 Geo. V. c. 28, s. 25.

List by officers of court of solicitors practising during the preceding year.

26. The officer having the control and superintendence of the Central Office, and every Local Registrar, and every Deputy Clerk of the Crown, and Deputy Registrar, and every clerk of a County or District Court, and every Registrar of the Surrogate Court, when the said offices are not held by the same person, shall, during the month of January in each year make out a list of the names of Solicitors who, by the papers or proceedings filed or had in his office, appear to have practised at any time during the year ending with the thirty-first day of December next preceding, and shall, on or before the first day of February in the year next after that for which the list is made up, transmit such list certified under his hand and the Seal of the Court to the Secretary of the Society. 2 Geo. V. c. 28, s. 26.

Transmission to Law Society.

27.—(1) A Solicitor who is a prisoner in any gaol or prison shall not during his confinement therein, nor shall any Solicitor who has been suspended from practising during the period of his suspension, commence, prosecute or defend as such Solicitor any action in any Court nor act in any matter in bankruptcy or insolvency.

Disability of
solicitors
in prison or
suspended.

(2) A Solicitor so practising, and any Solicitor permitting or empowering him so to practise in his name, shall be guilty of a contempt of the Court in which any such proceedings are taken, and shall be punishable by such Court accordingly.

Practitioner
guilty of
contempt.

(3) A Solicitor shall be incapable of maintaining any action for the recovery of any fee, reward or disbursement for or in respect of any matter or thing done by him in his own name or in the name of any other Solicitor while so imprisoned or suspended. 2 Geo. V. c. 28, s. 27.

Not to re-
cover fees.

28.—(1) A Solicitor shall not knowingly act as the professional agent of any person not duly qualified to act as a Solicitor, or suffer his name to be used in any such agency on account of or for the profit of an unqualified person, or send any process to such person, or do any other act to enable him to practise in any respect as a Solicitor, knowing him not to be duly qualified.

Solicitors
not to act
as agents
of unqualified
persons.

(2) If complaint is made in a summary way of a contravention of this section a Judge of the Supreme Court, upon proof thereof, may order that the Solicitor so offending shall be struck off the Roll and disqualified from practising as a Solicitor.

Punishment
by striking
off the Roll.

(3) The Court may also commit such unqualified person having so practised to the common gaol for any term not exceeding one year. 2 Geo. V. c. 28, s. 28.

Committal of
unqualified
person.

29. The Supreme Court may strike the name of any Solicitor off the Roll of Solicitors for default by him in payment of money received by him as a Solicitor. 2 Geo. V. c. 28, s. 29.

Court may
strike
solicitors
off the Roll.

30.—(1) A Solicitor shall not practise in any Court in Ontario either in his own name or by his partner, deputy or agent, or in the name of any other person, or otherwise directly or indirectly, while he holds or conducts any office of the Supreme Court or either Division thereof, or of a County or District Court, a Surrogate Court or a Division Court to which he is appointed by the Crown; but nothing herein contained shall extend to a Local Master or Deputy Registrar of the Supreme Court who is not a Deputy Clerk of the Crown and Pleas, or to the Official Guardian, or to an Official Referee, a Drainage Referee or an Official Arbitrator.

Practice
prohibited
while holding
certain
offices.

(2) Every person who contravenes the provisions of this section shall incur a penalty of \$2,000. 2 Geo. V. c. 28, s. 30.

Penalty.

Practice prohibited while engaged as a merchant.

31. A Solicitor shall not practise in any Court in Ontario while he is engaged in the business of a merchant, or connected by partnership in purchasing or vending merchandise in the way of trade as a merchant, nor until twelve months after he has ceased to be such merchant or to be so engaged or connected. 2 Geo. V. c. 28, s. 31.

[For punishment for tampering with Jurors, see The Jurors Act, R.S.O. c. 64.]

STRIKING A SOLICITOR OFF THE ROLL FOR DEFECT IN ARTICLES.

Limitation of time for striking off Roll for defect in articles.

32. Except in case of fraud no person admitted and enrolled shall be struck off the Roll on account of any defect in the articles of clerkship or in the filing thereof, or in his service thereunder or in his admission and enrolment, unless application for striking him off the Roll is made within twelve months next after his admission and enrolment.

PROCEEDINGS IF STRUCK OFF THE ROLL.

Notification of the Society when solicitor struck off Roll.

Duty of Secretary.

33. Where a Solicitor is struck off the Roll one of the Registrars of the High Court Division shall certify the same under his hand and the seal of the Supreme Court to the Secretary of the Society, stating whether such Solicitor was struck off at his own request or otherwise, and the Secretary shall attach the certificate to the certified copy of the Roll on which the name of such person stands, and shall, in the book kept by him, make a note opposite the name of such person of his having been struck off the Roll. 2 Geo. V. c. 28, s. 33.

SOLICITORS' COSTS.

Solicitors to deliver their bill one month before bringing action for costs.

34.—(1) No action shall be brought for the recovery of fees, charges or disbursements for business done by a Solicitor as such until one month after a bill thereof, subscribed with the proper hand of such Solicitor, his executor, administrator or assignee or, in the case of a partnership, by one of the partners, either with his own name, or with the name of such partnership, has been delivered to the person to be charged therewith, or sent by the post to, or left for him at his counting-house, office of business, dwelling-house or last known place of abode, or has been enclosed in or accompanied by a letter subscribed in like manner, referring to such bill.

Not necessary in first instance in action on bill to prove contents of bill delivered.

(2) In proving a compliance with this Act it shall not be necessary in the first instance to prove the contents of the bill delivered, sent or left, but it shall be sufficient to prove that a bill of fees, charges or disbursements subscribed as required by sub-section 1, or enclosed in or accompanied by such letter, was so delivered, sent or left; but the other party

may show that the bill so delivered, sent or left, was not such a bill as constituted a compliance with this Act. 2 Geo. V. c. 28, s. 34.

35. Where the retainer of the Solicitor is not disputed, and there are no special circumstances, an order may be obtained on *præcipe* from the proper officer in the county in which the Solicitor resides Order for taxation on præcipe.

- (a) by the client, for the delivery and taxation of the Solicitor's bill;
- (b) by the client, for the taxation of a bill already delivered, within one month from its delivery;
- (c) by the Solicitor, for the taxation of a bill already delivered, at any time after the expiration of one month from its delivery, provided no order for its taxation has been previously made. 2 Geo. V. c. 28, s. 35.

36.—(1) No such reference shall be directed upon an application made by the party chargeable with such bill after a verdict or judgment has been obtained, or after twelve months from the time such bill was delivered, sent or left as aforesaid, except under special circumstances to be proved to the satisfaction of the Court or Judge to whom the application for the reference is made. No reference on application of party chargeable after verdict or after 12 months from delivery.

(2) Where the reference is made under subsection 1, the Court or Judge, in making the same, may give any special directions relative to the costs of the reference. 2 Geo. V. c. 28, s. 36. Directions as to costs.

37. In case either party to a reference, having due notice, refuses or neglects to attend the taxation, the officer to whom the reference is made may tax the bill *ex parte*. 2 Geo. V. c. 28, s. 37. When officer may tax bill ex parte.

38.—(1) When a client or other person obtains an order for the delivery and taxation of a Solicitor's bill of fees, charges and disbursements, or a copy thereof, the bill shall be delivered within fourteen days from the service of the order. Delivery of bill and reference to taxation.

- (a) The bill delivered shall stand referred to the proper officer for taxation, and on the reference the Solicitor shall give credit for, and an account shall be taken of all sums of money by him received from or on account of the client, and the Solicitor shall refund what, if anything, he may on such taxation appear to have been overpaid;
- (b) The costs of the reference shall, unless otherwise directed, be in the discretion of the officer, sub-

ject to appeal, and shall be taxed by him when and as allowed;

- (c) The Solicitor shall not commence or prosecute any action in respect to the matters referred pending the reference without leave of the Court or a Judge;
- (d) The amount certified to be due shall be paid forthwith after confirmation of the certificate by filing, as in the case of a Master's report, by the party liable to pay the same;
- (e) Upon payment by the client or other person of what, if anything, may appear to be due to the Solicitor, or if nothing is found to be due to the Solicitor, the Solicitor, if required, shall deliver to the client or other person, or as he may direct, all deeds, books, papers and writings in the Solicitor's possession, custody or power belonging to the client;
- (f) The order shall be read as if it contained the above particulars, and shall not set forth the same, but may contain any variation therefrom and any other directions which the Court or Judge shall see fit to make.

Order presumed to contain clauses a to e.

(2) An order for reference of a Solicitor's bill for taxation shall be presumed to contain the clauses (a) to (e) of subsection 1, whether obtained on *præcipe* or otherwise, and by the Solicitor, client or other person liable to pay the bill.

Reference to be to local taxing officer.

(3) The reference for taxation shall, unless otherwise ordered, be to the proper taxing officer for the county in which the Solicitor resides. 2 Geo. V. c. 28, s. 38.

When actions for costs within the month may be allowed.

39. A Judge of the Supreme Court or of a County or District Court, on proof to his satisfaction that there is probable cause for believing that the party chargeable is about to depart from Ontario, may authorize a Solicitor to commence an action for the recovery of his fees, charges or disbursements against the party chargeable therewith, although one month has not expired since the delivery of the bill. 2 Geo. V. c. 28, s. 39.

Taxation where a party not being the principal pays a bill of costs.

40.—(1) Where any person, not being chargeable as the principal party, is liable to pay or has paid any bill either to the Solicitor, his assignee, or personal representative, or to the principal party entitled thereto, the person so liable to pay or paying, his assignee or personal representative, may apply to the Court or a Judge for an order referring to taxation as the party chargeable therewith might himself have done, and the same proceedings shall be had thereupon as if the application had been made by the party so chargeable.

(2) If such application is made where, under the provisions hereinbefore contained, a reference is not authorized to be made except under special circumstances, the Court or Judge to whom the application is made may take into consideration any additional special circumstances applicable to the person making it, although such circumstances might not be applicable to the party chargeable with the bill if he was the party making the application.

What special circumstances may be considered in such case.

(3) For the purpose of such reference the Court or Judge may order the Solicitor, his assignee or representative, to deliver to the party making the application a copy of the bill upon payment of the costs of the copy.

Order for delivery of a copy of the bill.

(4) When a person, other than the client, applies for taxation of a bill delivered or for the delivery of a copy thereof for the purpose of taxation, and it appears that by reason of the conduct of the client the applicant is precluded from taxing the same, but is nevertheless entitled to an account from the client, it shall not be necessary for the applicant to bring an action for an account, but the Court or a Judge may, in a summary manner, refer a bill already delivered or order delivery of a copy of the bill, and refer the same for taxation, as between the applicant and the client, and may add such parties not already notified as may be necessary.

Taxation at instance of third person.

(5) The provisions of section 38, so far as they are applicable, shall apply to such taxation. 2 Geo. V. c. 28, s. 40.

Application of s. 38.

41. No bill previously taxed shall be again referred unless, under the special circumstances of the case, the Court or Judge to whom the application is made thinks fit to direct a re-taxation thereof. 2 Geo. V. c. 28, s. 41.

When a bill may be re-taxed.

42. The payment of any bill shall not preclude the Court or Judge to whom the application is made from referring it for taxation, upon such terms and subject to such directions as to the Court or Judge may seem just, if the application is made within twelve months after payment, and if the special circumstances of the case, in the opinion of the Court or Judge, appear to require the taxation. 2 Geo. V. c. 28, s. 42.

Payment not to preclude taxation if applied for within a year.

43. Where a bill is referred for taxation, the officer to whom the reference is made may request the proper officer of any other Court to assist him in taxing any part of such bill, and the officer so requested shall thereupon tax the same, and shall have the same powers and may receive the same fees in respect thereof as upon a reference to him by the Court of which he is an officer, and he shall return the bill, with his opinion thereon, to the officer who so requests him to tax the same. 2 Geo. V. c. 28, s. 43.

A taxing officer may require the assistance of the officer of any other Court.

What to be considered in taxation of costs.

44. In the absence of any general rule, and so far as any such general rules do not apply, the taxing officer, in taxing a bill for preparing and executing any instrument, shall consider not the length but the skill and labour employed and responsibility incurred in the preparation thereof. 2 Geo. V. c. 28, s. 44.

How applications against solicitors to be intitled.

45. Every application to refer a bill for taxation, or for the delivery of a bill, or for the delivering up of deeds, documents and papers, shall be made *In the matter of (the Solicitor)*; and upon the taxation of any such bill the certificate of the officer by whom the bill is taxed, unless set aside or varied, shall be final and conclusive as to the amount thereof, and payment of the amount certified to be due and directed to be paid may be enforced according to the practice of the Court in which the reference was made. 2 Geo. V. c. 28, s. 45.

JUDGES MAY MAKE RULES.

Judges of Supreme Court to make rules, etc.

46. The Judges of the Supreme Court may, from time to time in accordance with the provisions of *The Judicature Act*, make General Rules or Regulations, other than rules relating to the admission and enrolment of Solicitors, for carrying out the provisions of this Act. 2 Geo. V. c. 28, s. 46.

Principles of remuneration in conveyancing matters. Imp. Act, 44-45 V. c. 44, s. 4.

47. Such Rules may include Rules respecting business by Solicitors connected with sales, purchases, leases, mortgages, settlements and other matters of conveyancing, and may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum or by a fixed sum for each document prepared or perused without regard to length, or in any other mode or partly in one mode and partly in another or others; and may, as regards the amount of the remuneration, regulate the same with reference to all or any of the following among other considerations:—

- (a) the position of the party for whom the Solicitor is concerned in any business, that is whether as vendor or as purchaser, lessor or lessee, mortgagor or mortgagee, and the like;
- (b) the place, district and circumstances at or in which the business or part thereof is transacted;
- (c) the amount of the capital money or of the rent to which the business relates;
- (d) the skill, labour and responsibility involved therein on the part of the Solicitor; and
- (e) the number and importance of the documents prepared or perused, without regard to length. 2 Geo. V. c. 28, s. 47.

AGREEMENTS BETWEEN SOLICITORS AND CLIENTS.

48. In this section and sections 49 to 66,

Interpreta-
tion.

- (a) "Client" shall include a person who, as a principal "Client." or on behalf of another person, retains or employs or is about to retain or employ a Solicitor, and a person who is or may be liable to pay the bill of a Solicitor for any services, fees, costs, charges or disbursements;
- (b) "Services" shall include fees, costs, charges and "Services." disbursements. 2 Geo. V. c. 28, s. 48.

49.—(1) Subject to the provisions of sections 50 to 66 a Solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or a part of any past or future services in respect of business done or to be done by such Solicitor, either by a gross sum or by commission or percentage, or by salary or otherwise, and either at the same rate or at a greater or less rate than that at which he would otherwise be entitled to be remunerated. In this subsection the expressions "commission" and "percentage" apply only to non-contentious business and to conveyancing.

(2) This section shall apply to and include any business to which section 47 relates, whether or not any general rule under section 46 is in operation. 2 Geo. V. c. 28, s. 49.

50. Where the agreement is made in respect of business done or to be done in any Court, except a Division Court, the amount payable under the agreement shall not be received by the Solicitor until the agreement has been examined and allowed by a taxing officer of a Court having power to enforce the agreement. 2 Geo. V. c. 28, s. 50.

51. Where it appears to the taxing officer that the agreement is not fair and reasonable he may require the opinion of a Court or a Judge to be taken thereon. 2 Geo. V. c. 28, s. 51.

52. The Court or Judge may either reduce the amount payable under the agreement or order it to be cancelled and the costs, fees, charges and disbursements in respect of the business done to be taxed in the same manner as if the agreement had not been made. 2 Geo. V. c. 28, s. 52.

53. Such an agreement shall not affect the amount, or any right or remedy for the recovery, of any costs recoverable from the client by any other person, or payable to the client by any other person, and any such other person may require any costs payable or recoverable by him to or from the client to be taxed in the ordinary manner, unless such person has otherwise agreed; but the client who has entered

into the agreement shall not be entitled to recover from any other person under any order for the payment of any costs, which are the subject of the agreement, more than the amount payable by the client to his own Solicitor under the agreement. 2 Geo. V. c. 28, s. 53.

Claims for additional remuneration excluded.

54. Such an agreement shall exclude any further claim of the Solicitor beyond the terms of the agreement in respect of services in relation to the conduct and completion of the business in respect of which it is made, except such as are expressly excepted by the agreement. 2 Geo. V. c. 28, s. 54.

Agreements relieving solicitor from liability for negligence void.

55. A provision in any such agreement that the Solicitor shall not be liable for negligence or that he shall be relieved from any responsibility to which he would otherwise be subject as such Solicitor shall be wholly void. 2 Geo. V. c. 28, s. 55.

Determination of disputes under the agreement.

56. No action shall be brought upon any such agreement, but every question respecting the validity or effect of it may be examined and determined, and it may be enforced or set aside without action on the application of any person who is a party to the agreement or who is or is alleged to be liable to pay or who is or claims to be entitled to be paid the costs, fees, charges or disbursements, in respect of which the agreement is made, by the Court, not being a Division Court, in which the business or any part of it was done or a Judge thereof, or, if the business was not done in any Court, by the Supreme Court or a Judge thereof. 2 Geo. V. c. 28, s. 56.

Enforcement of agreement.

57. Upon any such application, if it shall appear to the Court or Judge that the agreement is in all respects fair and reasonable between the parties, it may be enforced by such Court or Judge by order in such manner and subject to such conditions as to the costs of the application as such Court or Judge may think fit, but if the terms of the agreement shall not be deemed by the Court or Judge to be fair and reasonable the agreement may be declared void, and the Court or Judge may order it to be delivered up to be cancelled and may direct the costs, fees, charges and disbursements incurred or chargeable in respect of the matters included therein to be taxed in the ordinary manner. 2 Geo. V. c. 28, s. 57.

Order of court for re-opening of agreement.

58. Where the amount agreed for under any such agreement has been paid by, or on behalf of the client or by any person chargeable with or entitled to pay the same, the Supreme Court or a Judge thereof may, upon the application of the person who has paid such amount, within twelve months after the payment thereof, if it appears to such Court or Judge that the special circumstances of the case require the agreement to be re-opened, re-open the same and order

the costs, fees, charges and disbursements to be taxed, and may also order the whole or any part of the amount received by the Solicitor to be repaid by him on such terms and conditions as to the Court or Judge may seem just. 2 Geo. V. c. 28, s. 58.

59. Where any such agreement is made by the client in the capacity of guardian or of trustee under a deed or will, or of committee of any person whose estate or property will be chargeable with the amount or any part of the amount payable under the agreement, the agreement shall, before payment, be laid before the Senior Taxing Officer at Toronto who shall examine it and may disallow any part of it or may require the direction of the Court or a Judge to be made thereon. 2 Geo. V. c. 28, s. 59.

Agreements made by client in fiduciary capacity to be approved by taxing officer.

60. If the client pays the whole or any part of such amount without the previous allowance of such officer or the direction of the Court or a Judge he shall be liable to account to the person whose estate or property is charged with the amount paid or any part of it for the amount so charged, and the Solicitor who accepts such payment may be ordered by the Court or Judge to refund the amount received by him. 2 Geo. V. c. 28, s. 60.

Client paying without approval to be liable to estate.

61. Nothing in sections 49 to 66 shall give validity to a purchase by a Solicitor of the interest or any part of the interest of his client in any action or other contentious proceeding to be brought or maintained, or give validity to an agreement by which a Solicitor retained or employed to prosecute any action or proceeding stipulates for payment only in the event of success in such action or proceeding, or where the amount to be paid to him is a percentage of the amount or value of the property recovered or preserved or otherwise determinable by such amount or value or dependent upon the result of the action or proceeding. 2 Geo. V. c. 28, s. 61.

Solicitors not to purchase any interest in litigation or to make payment dependent upon success.

62. A Solicitor may accept from his client, and a client may give to his Solicitor, security for the amount to become due to the Solicitor for business to be transacted by him and for interest thereon, but so that the interest is not to commence until the amount due is ascertained by agreement or by taxation. 2 Geo. V. c. 28, s. 62.

Security may be given to solicitor for costs.

63. A Solicitor may charge interest at the rate of five per centum per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from demand from the client, and where the same are payable by an infant or out of a fund presently available the demand may be made on the parent or guardian or the trustee or other person liable. 2 Geo. V. c. 28, s. 63.

Interest on disbursements and costs.

Where solicitor dies or becomes incapable of acting after agreement.

64. Where a Solicitor has made such an agreement and anything has been done by him under it and before the agreement has been completely performed by him, such Solicitor dies or becomes incapable to act, an application may be made to any Court which would have jurisdiction to examine and enforce the agreement by any person who is a party thereto, and such Court may thereupon enforce or set aside the agreement so far as the same may have been acted upon as if such death or incapacity had not happened, and if it deems the agreement to be in all respects fair and reasonable may order the amount in respect of the past performance of it to be ascertained by taxation; and the taxing officer, in ascertaining such amount, shall have regard, so far as may be, to the terms of the agreement, and payment of the amount found to be due may be ordered in the same manner as if the agreement had been completely performed by the Solicitor. 2 Geo. V. c. 28, s. 64.

Changing solicitor after making agreement.

65. If, after any such agreement has been made, the client shall change his Solicitor before the conclusion of the business to which the agreement relates, which he shall be at liberty to do notwithstanding the agreement, the Solicitor, party to the agreement, shall be deemed to have become incapable to act under it within the meaning of the next preceding section, and upon any order being made for taxation of the amount due him in respect to the past performance of the agreement the Court shall direct the taxing officer to have regard to the circumstances under which such change of Solicitor took place, and upon the taxation the Solicitor shall not be deemed to be entitled to the full amount of the remuneration agreed to be paid to him, unless it shall appear that there has been no default, negligence, improper delay or other conduct on his part affording reasonable ground to the client for such change of Solicitor. 2 Geo. V. c. 28, s. 65.

Bills under agreement not to be liable to taxation.

66. Except as otherwise provided in sections 49 to 65 a bill of a Solicitor for the amount due under any such agreement shall not be subject to any taxation or to any provision of law respecting the signing and delivery of a bill of a Solicitor. 2 Geo. V. c. 28, s. 66.

SOLICITORS AS MORTGAGEES, TRUSTEES, ETC.

Definition of mortgage.

67. In sections 68 to 70 the expression "mortgage" includes any charge on any property for securing money or money's worth. 2 Geo. V. c. 28, s. 67.

Charges, etc., where mortgage is made with solicitor.

68.—(1) Any Solicitor to whom, either alone or jointly with any other person, a mortgage is made, or the firm of which such Solicitor is a member, shall be entitled to receive for all business transacted and acts done by such Solicitor or firm in negotiating the loan, deducing and investigating the title to the property and preparing and completing the mort-

gage, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to a person not a Solicitor, and such person had retained and employed such Solicitor or firm to transact such business and do such acts; and such charges and remuneration shall accordingly be recoverable from the mortgagor.

Imp. Act 58,
59 Vic. c. 25.

(2) This section applies only to mortgages made after the 15th day of April, 1912. 2 Geo. V. c. 28, s. 68.

Application
of section.

69.—(1) Any Solicitor to or in whom, either alone or jointly with any other person, any mortgage is made or is vested by transfer or transmission, or the firm of which such Solicitor is a member, shall be entitled to receive and recover from the person on whose behalf the same is done or to charge against the security for all business transacted and acts done by such Solicitor or firm subsequent and in relation to such mortgage or to the security thereby created or the property therein comprised, all such usual professional charges and remuneration as he or they would have been entitled to receive if such mortgage had been made to and had remained vested in a person not a Solicitor, and such person had retained and employed such Solicitor or firm to transact such business and do such acts, and accordingly no such mortgage shall be redeemed except upon payment of such charges and remuneration.

Right of
solicitor with
whom mort-
gage is made
to recover
costs, etc.

Imp. Act,
58-59 V.
c. 25.

(2) This section applies to mortgages made and business transacted and acts done either before or after the commencement of this Act. 2 Geo. V. c. 28, s. 69.

Application
of section.

70. A Solicitor, who is a director of a trust company or of any other company, or the firm of which such Solicitor is a member, shall be entitled to receive for all business transacted or acts done by such Solicitor or firm for such company in relation to or in connection with any matter in which the company acts as trustee, guardian, personal representative or agent, all such usual professional fees and remuneration as he or they would be entitled to receive if such Solicitor had not been a director of such company, and such company had retained and employed such Solicitor or firm to transact such business and do such acts, and such charges and remuneration shall accordingly be recoverable from such company, and may be charged by them as a disbursement in the matter of such trusteeship, guardianship, administration or agency. 2 Geo. V. c. 28, s. 70.

Solicitor-
director, right
to charge for
services to
trust estate.

RIGHT TO TAX COSTS OF SALARIED SOLICITOR.

71. Where the remuneration of a Solicitor or Counsel employed by a corporation is wholly or partly paid by salary the corporation employing such Solicitor or Counsel shall

Collection
of costs
where corpora-
tion solicitor
or counsel
receives
salary.

notwithstanding have the right to recover and collect lawful costs in all actions and proceedings in the same manner as if the Solicitor or Counsel were not receiving a salary where the costs are by the terms of his employment payable to the Solicitor or Counsel as part of his remuneration in addition to his salary. 2 Geo. V. c. 28, s. 71.

SOLICITORS AS OFFICERS OF COURT.

Saving
jurisdiction
of Court.

72. Nothing in this Act shall interfere with the jurisdiction over Solicitors as officers of Court. 2 Geo. V. c. 28, s. 72.

5. NOTARIES PUBLIC.

CHAPTER 160.

An Act respecting Notaries Public.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Notaries Act*. 9 Edw. VII. Short title.
c. 63, s. 1.

2. Subject to the provisions of section 6 the Lieutenant-Governor may by commission appoint such persons as he thinks fit Notaries Public for Ontario. 9 Edw. VII. c. 63, s. 2. Appointment.

3. A Notary shall during pleasure have, use and exercise the power of drawing, passing, keeping and issuing all deeds and contracts, charter-parties and other mercantile transactions in Ontario, and also of attesting all commercial instruments that may be brought before him for public protestation, and otherwise of acting as is usual in the office of Notary, and may demand, receive and have all the rights, profits and emoluments rightfully appertaining and belonging to the calling of Notary Public. 9 Edw. VII. c. 63, s. 3. Powers of Notaries.

4. A Notary Public shall have the same powers throughout Ontario as a solicitor of the Supreme Court has under *The Commissioners for taking Affidavits Act*. 9 Edw. VII. c. 63, s. 4. Power to take affidavits. Rev. Stat. c. 77.

5. A Notary Public shall be deemed to be an officer of the Supreme Court. 9 Edw. VII. c. 63, s. 5. Officers of Court.

6.—(1) Any person, other than a barrister or solicitor, desirous of being appointed a Notary Public, shall be subject to examination in regard to his qualification for the office by the Judge of the County or District Court of the county or district in which he resides, or by such other person as may be appointed in that behalf by the Lieutenant-Governor; and no such person shall be appointed a Notary Public without a certificate from such Judge, or such other person, that he has examined the applicant and finds him qualified for the office, and that in his opinion a Notary Public is needed for the Examination as to qualification of a layman desirous of being appointed Notary Public.

public convenience in the place where the applicant resides and intends to carry on business.

Regulations.

(2) The Lieutenant-Governor in Council may make regulations for such examination and certificate; and the Judge or other person examining shall be entitled to receive from the person examined a fee of \$5 for the examination. 9 Edw. VII. c. 63, s. 6.

Fee to examiner.

Restrictions
in case of lay
appointees.

7. Where a person, other than a barrister or solicitor, is appointed a Notary Public restrictions may be imposed in the commission limiting the territory and cases in which such person may use and exercise his powers. 9 Edw. VII. c. 63, s. 7.

Notary Public
need not affix
seal on affidavits, etc.

8. Where, under the authority of any Act of Ontario, a Notary Public is authorized to administer oaths or to take affidavits or declarations within Ontario it shall not be necessary to the validity of any such oath, affidavit or declaration that he shall affix his seal thereto. 9 Edw. VII. c. 63, s. 8.

6. MEDICAL PROFESSION.

CHAPTER 161.

An Act respecting the Profession of Medicine and Surgery.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Ontario Medical Act*. Short title
R.S.O. 1897, s. 176, s. 1.

2. "The College of Physicians and Surgeons of Ontario," College of Physicians and Surgeons continued.
hereinafter called the College, is continued as a body corporate, with power to acquire, hold and dispose of real and personal property for the purposes of this Act. R.S.O. 1897, c. 176, s. 2.

3. Every person registered, as a legally qualified medical practitioner under any Act heretofore passed or under this Act shall be a member of the College. Members thereof under former Acts. R.S.O. 1897, c. 176, ss. 3, 4.

4.—(1) There shall continue to be a council of the College, Council of the College of Physicians and Surgeons. hereinafter called the Council, to be composed as follows:—

(a) One member to be chosen from each of the Universities, Colleges and other bodies hereinafter designated, to wit: The University of Toronto, the Queen's University and College of Kingston, the University of Victoria College, the University of Trinity College, the Royal College of Physicians and Surgeons, Kingston, the Toronto School of Medicine, Trinity Medical School, the Ottawa University, Regiopolis College, the Western University, and of every other University, College or body in the Province now by law authorized, or which may be hereafter authorized to grant degrees in medicine and surgery, and which establishes and maintains to the satisfaction of the College of Physicians and Surgeons of Ontario, a Medical Faculty in connection therewith. Representatives of certain Colleges.

(b) Five members to be duly elected by the licensed practitioners in homœopathy who have been regis- Representatives of Homœopathy.

tered under this Act, or under the provisions in that behalf of any of the Acts mentioned in section 3 of this Act;

Elected members.

(c) Eighteen members to be elected in the manner hereinafter provided from amongst and by the registered members of the profession other than those mentioned in the preceding clauses of this section. R.S.O. 1897, c. 176, ss. 5, 6 (1); 10 Edw. VII. c. 77, s. 4 (2).

No teacher, etc., in College to be a member except as representative of his College.

(2) No teacher, professor or lecturer of any of the bodies mentioned in subsection 1 shall hold a seat in the Council except as a representative of the body to which he belongs.

Members of the Council to be registered practitioners.

(3) Every member of the Council, appointed under subsection 1 shall be a legally qualified medical practitioner. R.S.O. 1897, c. 176, s. 6 (2), (3).

Residence in division.

(4) Each of the eighteen members to be elected as aforesaid shall be a resident of the territorial division for which he is elected, and any member who, during the term for which he is elected, ceases to reside in the division for which he is elected shall thereby vacate his office as such member. R.S.O. 1897, c. 176, s. 6 (4); 10 Edw. VII. c. 77, s. 4 (2).

Elections, how to be conducted.

(5) One member shall be so elected from each of the territorial divisions mentioned in Schedule A to this Act by the registered practitioners of medicine resident in such division; and the manner of holding such election shall, with respect to the time thereof and the taking the votes therefor, be determined by a by-law to be passed by the Council; and in default of such by-law being made, then the Lieutenant-Governor shall prescribe the time and manner of holding such election. R.S.O. 1897, c. 176, s. 6 (5).

Membership for five years.

5.—(1) The members of the Council shall be elected or appointed, as the case may be, for a period of four years; but any member may resign at any time by letter addressed to the President or Registrar of the Council; and upon the death or resignation of any member of the Council, it shall be the duty of the Registrar forthwith to notify the body in respect to which the vacancy has occurred, of the death or resignation, and such body shall have the power to nominate another duly qualified person to fill the vacancy; or if the vacancy be caused by the death or resignation of any member elected from a territorial division, or by his becoming disqualified owing to his having ceased to reside therein, or in case a new election is requisite on account of a decision of the Judge upon a contested election, the Registrar shall forthwith cause a new election to be held in such territorial division, and the election shall be conducted in accordance with the by-laws and regulations of the Council, but it shall be lawful for the Council during such vacancy to exercise the powers hereinafter mentioned.

Death or resignation provided for.

(2) In the event of the death or resignation of any member of the Council representing the practitioners of the homœopathic system of medicine, the remaining representatives of the homœopathic system in the Council may fill such vacancy by selecting from amongst the duly registered practitioners in homœopathy a person to fill the vacancy.

Vacancies in respect of Homœopathic members of the Council.

(3) The Registrar shall, not more than sixty nor less than forty days before the time for receiving nominations for any election under this Act, notify, by letter or post card, every registered medical practitioner in Ontario of the date of receiving such nominations. R.S.O. 1897, c. 176, s. 7.

Notice or date for nomination.

6. The persons entitled to vote under this Act at any election shall be all duly registered practitioners. R.S.O. 1897, c. 176, s. 8.

Persons entitled to vote.

7.—(1) Any member of the College may have his name transferred from one class of voters to any other class on his presenting to the Registrar a certificate duly signed by the member or members of the Board of Examiners appointed by the Council to examine candidates on the subjects specified in this Act, as peculiar to each school of medicine, testifying that the member so applying to have his name so transferred has shown a sufficient knowledge of the system of medicine with which he desires to connect himself, to entitle him to be admitted to the class to which he desires to be transferred and on being so admitted he shall be entitled to vote in that class only.

Transfer to different class on voters' list.

(2) There shall be payable to the Registrar for such transfer a fee of \$2.

Fee on transfer.

(3) No member shall, without the sanction of the Council, be entitled to return to the class from which he has been so transferred; and no member shall at any time be entitled to vote in more than one class of the voters who, in accordance with the provisions of this Act, vote in the election of the members of the Council. R.S.O. 1897, c. 176, s. 9.

Return of voter to former class.

Not to vote in more than one.

8. In case of any doubt or dispute as to the legality of the election of any member of the Council, it shall be lawful for the Council to hold an inquiry and decide who is the legally elected member of the Council; and the person whom they decide to have been elected shall be and be deemed to be the member legally elected; and if the election is found to have been illegal the Council shall have power to order a new election. R.S.O. 1897, c. 176, s. 10.

Disputed elections, how dealt with.

9.—(1) In case the validity of the election of any member of the Council is contested, the same shall be tried by the Judge or junior or acting Judge of the County or District Court of the County or District in which the person whose election is complained of resides, and the proceed-

Controverted elections.

Rev. Stat.
c. 192.

ings thereon shall *mutatis mutandis* be the same as nearly as may be, as in the case of municipal elections under the sections of *The Municipal Act*, relating to controverted elections, but no security by the complainant shall be necessary.

Who may be
relator.

(2) Any person qualified to vote at the election complained of may be the relator in proceedings under this section.

Decision
final.

(3) The decision of the Judge shall be final. R.S.O. 1897, c. 176, s. 11.

Meetings of
the Council.

10.—(1) The Council may make rules and regulations as to the times and places of meetings of the Council, and the mode of summoning the same; and in the absence of any rule or regulation as to the summoning of meetings the President or, in the event of his absence or death, the Registrar may summon a meeting to be held at such time and place as to him seems fit, by circular letter mailed to each member.

Absence of
President.

(2) In the event of the absence of the President from any meeting, the Vice-President or, in his absence, some other member to be chosen from among the members present shall act as President.

Majority.

(3) All questions shall be decided by the majority of the members present, and nine members shall form a quorum of the Council.

Voting.

(4) At all meetings the President for the time being shall have a casting vote. R.S.O. 1897, c. 176, s. 12.

Payment to
members of
the Council.

11. There shall be paid to the members of the Council such fees for attendance, and such reasonable travelling expenses, as may be fixed by by-law of the Council. R.S.O. 1897, c. 176, s. 13.

Appointment
of officers.

12. The Council shall annually appoint a President, Vice-President, Registrar, Treasurer and such other officers as may from time to time be necessary for giving effect to this Act, who shall hold office during the pleasure of the Council; and the Council may fix the salaries or fees to be paid to such officers, and to the Board of Examiners herein-after mentioned. R.S.O. 1897, c. 176, s. 14.

Salaries.

Executive
Committee.

13. The Council shall appoint annually from among its members an Executive Committee, to take cognizance of, and action upon, all such matters as may be delegated to it by the Council or as may require immediate interference or attention between the adjournment of the Council and its next meeting; and all such acts shall be valid only until the next ensuing meeting of the Council; but the committee shall have no power to alter, repeal or suspend any by-law of the Council. R.S.O. 1897, c. 176, s. 15.

DIVISION ASSOCIATIONS.

14.—(1) In each of the territorial divisions described in Schedule "A" of this Act there may be established a territorial division medical association, which may be called—^{Territorial division medical associations.}
The Division Association of such division.

(2) Every member of the College resident within the territorial division, shall be a member of the Division Association; and the representative elected to the Council for the territorial division shall be *ex-officio* Chairman of the Division Association. R.S.O. 1897, c. 176, s. 16. ^{Membership.}

MEDICAL EDUCATION.

15.—(1) The Council shall have power and authority to appoint examiners for the admission of all students to the matriculation or preliminary examination, and may make by-laws and regulations for determining the admission and enrolment of students; but any change in the curriculum of studies fixed by the Council shall not come into effect until one year after such change is made. ^{Matriculation or preliminary examinations.}

(2) Until a Homœopathic Medical College for teaching purposes is established in Ontario, candidates wishing to be registered as homœopathists shall pass the matriculation examination established under this Act, as the preliminary examination for all students in medicine, and shall present evidence of having spent the full period of study required by the curriculum of the Council, under the supervision of a duly registered homœopathic practitioner. ^{Homœopathists}

(3) Such candidates must also have complied with the full curriculum of studies, prescribed from time to time by the Council for all medical students, but the full time of attendance upon lectures and hospitals required by the curriculum of the Council, may be spent in such Homœopathic Medical Colleges in the United States of America or in Europe as may be recognized by a majority of the homœopathic members of the Council; but in all Homœopathic Colleges, where the winter course of lectures is only four months' duration, certified tickets of attendance on one such course shall be held to be equivalent to two-thirds of one six months' course, as required by the Council; and when such teaching body has been established in Ontario it shall be optional for such candidates to pursue in part or in full the required curriculum in Ontario. R.S.O. 1897, c. 176, s. 17. ^{Compliance with curriculum.}

16. The Council may make by-laws as to the terms upon which it will receive the matriculation and other certificates of Colleges and other institutions not in Ontario. R.S.O. 1897, c. 176, s. 18. ^{Council may recognize certificates of foreign institutions.}

Graduates of
universities
in His Majes-
ty's dominions.

17.—(1) Graduates in Arts of any university in His Majesty's Dominions shall not be required to pass the preliminary examination.

Standard for
matriculation.

(2) Where the Council adopts a lower standard for matriculation than graduation in arts, such standard shall conform to the curriculum of the universities in the Province for the academic year to which such standard applies, or to the course of study prescribed for junior or senior matriculation in arts. R.S.O. 1897, c. 176, s. 19.

Curriculum
of studies.

18. The Council may prescribe a curriculum of studies to be pursued by the students, and such curriculum of studies shall be observed and taught by all bodies referred to in section 4. R.S.O. 1897, c. 176, s. 20.

MEDICAL REGISTRATION.

Registration.

19. The Council shall cause to be kept by the Registrar a book or register, in which shall be entered the name of every person registered according to the provisions of this Act; and, the names of all persons who have complied with the enactments hereinafter contained, and with the rules and regulations made or to be made by the Council respecting the qualifications to be required from practitioners of medicine, surgery and midwifery in this Province.

Only registered
persons to
practise.

(2) Those persons only whose names are inscribed in the book or register mentioned in subsection 1, shall be deemed to be qualified and licensed to practise medicine, surgery or midwifery in Ontario, except as hereinafter provided.

Inspection of
Register.

(3) The book or register shall at all times be open, and subject to inspection by any duly registered practitioner in Ontario, or by any other person. R.S.O. 1897, c. 176, s. 21.

Registrar to
keep register
correct.

20.—(1) The Registrar shall keep the register correct and in accordance with this Act, and the orders and regulations of the Council, and shall erase the names of all registered persons who have died, and make the necessary alterations in the addresses and qualifications of the persons registered under this Act.

Written
enquiry by
Registrar.

(2) To enable the Registrar duly to fulfil the duties imposed upon him, he may, by letter sent by registered post addressed to any registered person according to his address on the register, inquire whether such person has ceased to practise or has changed his residence, and if no answer to such letter is received within the period of six months from the mailing thereof the Registrar may erase the name of such person from the register; but such name shall be restored to the register on compliance with the other provisions of this Act. R.S.O. 1897, c. 176, s. 22.

21.—(1) The Council may admit to registration all such persons as are duly registered in the medical register of Great Britain, or are otherwise authorized to practise medicine, surgery and midwifery in the United Kingdom of Great Britain and Ireland, upon such terms as the Council may deem expedient.

As to registration of persons from Great Britain and Ireland.

(2) Any medical practitioner legally qualified according to the laws of the Province of Manitoba, who was at and before the date of the Order of Her late Majesty Queen Victoria in Council with respect to the westerly boundary of Ontario residing and practising in the territory now constituting the Districts of Rainy River and Kenora, and who, on the 4th day of May, 1894, still resided in that territory shall, upon production of a certificate of qualification to practise medical surgery and midwifery from "The College of Physicians and Surgeons of Manitoba," be entitled to be registered as a practitioner of medicine, surgery and midwifery in the said districts without the payment of any fee for being registered or undergoing an examination, but subject to the other conditions and regulations applicable to the medical profession in Ontario. R.S.O. 1897, c. 176, s. 23.

Manitoba Practitioners in Rainy River before settlement of boundary to be entitled to registration.

22. Every person who possesses any one or more of the qualifications described in Schedule "B" to this Act, attained prior to the 23rd day of July, 1870, shall, on payment of a fee to be fixed by by-law of the Council, not exceeding \$10, be entitled to be registered on producing to the Registrar the document conferring or evidencing the qualification or each of the qualifications in respect whereof he seeks to be so registered, or upon transmitting by post to the Registrar, information of his name and address, and evidence of the qualification or qualifications in respect whereof he seeks to be registered, and of the time or times at which the same was or were respectively attained; but no one registered under the Acts mentioned in section 3 of this Act shall be liable to pay any fee for being registered under this Act. R.S.O. 1897, c. 176, s. 24.

Qualification for, and mode of registry

23. Every person desirous of being registered under the provisions of this Act, and who had not become possessed of any one of the qualifications in Schedule "B" mentioned, before the 23rd day of July, 1870, shall, before being entitled to registration, present himself before the Board of Examiners, mentioned in section 28, for examination as to his knowledge and skill for the efficient practice of his profession; and upon passing the examination required, and proving to the satisfaction of the Board of Examiners, that he has complied with the rules and regulations made by the Council, and on the payment of such fees as the Council may by general by-law establish, such person shall be entitled to be registered, and to practice medicine, surgery and midwifery in Ontario. R.S.O. 1897, c. 176, s. 25.

Examination before registration, when necessary.

Registration
of persons
from other
Provinces of
the Dominion.

24. When and as soon as it appears that there has been established in any other Province of the Dominion of Canada a central examining board similar to that constituted by this Act, or an institution duly recognized by the Legislature of such other Province as the sole examining body for the purpose of granting certificates of qualification, and wherein the curriculum is equal to that established in Ontario, the holder of any such certificate shall be entitled to registration by the Council upon the production of his certificate if the same privilege is accorded by such Examining Board or Institution to those holding certificates in Ontario. R.S.O. 1897, c. 176, s. 26.

Board of
Examiners.

25.—(1) At the annual meeting of the Council in each year, there shall be elected a Board of Examiners, whose duty it shall be to examine, at least once in each year, all candidates for registration in accordance with the by-laws, rules and regulations of the Council. R.S.O. 1897, c. 176, s. 27 *part*.

Examiners,
how
appointed.

(2) The Board of Examiners shall be composed as follows:—One member from each of the teaching bodies now existing, referred to in section 4 of this Act, and one from every other School of Medicine which may be hereafter organized in connection with any University or College which is empowered by law to grant diplomas in medicine or surgery; and not less than six members to be chosen from among those members of the College of Physicians and Surgeons of Ontario, who are not connected with any of the above teaching bodies. R.S.O. 1897, c. 176, s. 28.

Where ex-
aminations to
be held.

26. The examinations shall be held at Toronto, Kingston and London at such times and in such manner as the Council by by-law directs. R.S.O. 1897, c. 176, s. 27 *part*; 6 Edw. VII. c. 24, s. 1.

Examinations
of Homœo-
paths.

27. A candidate who, at the time of his examination, signifies his wish to be registered as a homœopathic practitioner, shall not be required to pass an examination in either materia medica, or therapeutics, or in the theory or practice of physic, or in surgery or midwifery, except the operative practical parts thereof, before any examiners other than those approved of by the representatives in the Council of the homœopathic system. R.S.O. 1897, c. 176, s. 29.

Power of
Council to
make rules,
etc.

28.—(1) The Council shall from time to time as occasion may require, make such orders, regulations or by-laws as may be necessary (a) respecting the registers to be kept under this Act, and the fees to be paid for registration, and (b) for the guidance of the Board of Examiners.

As to ex-
aminations.

(2) The Council may prescribe the subjects and modes of the examinations, the time and place of holding the same, and generally may make all such rules and regulations in

respect of such examinations not contrary to the provisions of this Act, as they deem expedient and necessary. R.S.O. 1897, c. 176, s. 30.

29. Every person registered under this Act who obtains any higher degree or any qualification other than the qualification in respect of which he has been registered, shall, on the payment of such fees as the Council may prescribe, be entitled to have such higher degree or additional qualification inserted in the register in substitution for, or in addition to, the qualification previously registered. R.S.O. 1897, c. 176, s. 31.

Additional
qualification
or degree.

30.—(1) No qualification shall be entered on the register either on the first registration or by way of addition to a registered name unless the Registrar is satisfied by proper evidence that the person claiming is entitled to it; and any appeal from the decision of the Registrar may be decided by the Council; and any entry proved to the satisfaction of the Council to have been incorrectly made, may be erased from the register by an order in writing of the Council.

Registrar to
be satisfied as
to qualification.

Appeal to the
Council.

(2) In the event of the Registrar being dissatisfied with the evidence adduced by the person claiming to be registered, he shall have the power, subject to an appeal to the Council, of refusing registration until the person claiming to be registered has furnished such evidence duly attested by oath, before the Judge of a County or District Court. R.S.O. 1897, c. 176, s. 32.

Evidence on
oath.

31.—(1) Where any registered medical practitioner has either before or after he is registered been convicted either in His Majesty's dominions or elsewhere of an offence, which, if committed in Canada, would be an indictable offence, or been guilty of any infamous or disgraceful conduct in a professional respect, such practitioner shall be liable to have his name erased from the register. R.S.O. 1897, c. 176, s. 33 (1).

Erasing names
from register.

(2) The Council or the Executive Committee may, and upon the application of any four registered medical practitioners shall, cause enquiry to be made into the case of a person alleged to be liable to have his name erased under this section, and on proof of such conviction or of such infamous or disgraceful conduct, the Council shall cause the name of such person to be erased from the register; but the name of a person shall not be erased under this section on account of his adopting, or refraining from adopting, the practice of any particular theory of medicine or surgery, nor on account of a conviction for a political offence out of His Majesty's dominions, nor on account of a conviction for an offence which though within the provisions of this section ought not, either from the trivial nature of the offence, or

Action by
Council.

Saving.

from the circumstances under which it was committed, to disqualify a person from practising medicine or surgery. R.S.O. 1897, c. 33 (2); 10 Edw. VII. c. 77, s. 2 (1), (2).

Order for payment of costs to respondent.

(3) The Council may order to be paid out of any funds at their disposal such costs as to them may seem just to any person against whom any complaint has been made which when finally determined, is found to have been frivolous and vexatious. R.S.O. 1897, c. 176, s. 33 (3).

Removal from register after conviction by Court.

(4) Upon receipt of proof of the finding or decision of any Court of Record in Ontario, civil or criminal, that a criminal offence has been committed in connection with the practice of his profession by any registered medical practitioner, the Registrar shall immediately erase from the register the name of such practitioner. 10 Edw. VII. c. 77, s. 2 (3).

Restoring names to register after erasure.

32.—(1) Where the Council directs the erasure from the register of the name of any person, or of any other entry, the name of that person or that entry shall not be again entered on the register, except by the direction of the Council, or by the order of a Divisional Court.

Restoration by Council.

(2) If the Council think fit in any case, they may direct the Registrar to restore to the register any name or entry erased therefrom either without fee or on payment of such fee, not exceeding the registration fee, as the Council may, from time to time, fix; and the Registrar shall restore the same accordingly. R.S.O. 1897, c. 176, s. 34.

Committee for erasing and restoring names.

33.—(1) The Council shall for the purpose of exercising in any case the powers of erasing from and of restoring to the register the name of any person or any entry, ascertain the facts of such case by a committee of their own body not exceeding five in number, of whom the quorum shall be not less than three, and a written report of the committee may be acted upon for the purpose of the exercise of such powers by the Council.

Duty of Council as to committee.

(2) The Council shall from time to time appoint, and shall always maintain a committee for the purposes of this section, and subject to the provisions of this section, may from time to time determine the constitution, and the number and tenure of office of the members of the committee.

Procedure.

(3) The committee shall meet, from time to time, for the despatch of business, and subject to the provisions of this section, and of any regulations from time to time made by the Council, may regulate the summoning, notice, place, management and adjournment of such meetings, the appointment of a chairman, the mode of deciding questions, and generally the transaction and management of business including the quorum, and if there is a quorum the committee may act notwithstanding any vacancy in their body,

and in case of a vacancy the committee may appoint a member of the Council to fill the vacancy until the next meeting of the Council.

(4) The committee may, for the purpose of the execution of their duties under this Act, employ, at the expense of the Council, such legal or other assessor or assistant as the committee may think necessary or proper; and the person whose conduct is the subject of enquiry shall also have the right to be represented by counsel; but all meetings of any such committee when held for taking evidence or otherwise ascertaining the facts shall be held within the county where the member complained of resides or the alleged offence was committed. Legal assistance, etc. Right to counsel. Place of meeting.

(5) At least two weeks before the first meeting of the committee to be held for taking the evidence or otherwise ascertaining the facts, a notice shall be served upon the person whose conduct is the subject of inquiry, and such notice shall embody a copy of the charges made against him or a statement of the subject matter of the inquiry, and shall also specify the time and place of such meeting. Notice of change and hearing.

(6) The testimony of witnesses shall be taken under oath, to be administered by the chairman or acting chairman of the committee, and there shall be full right to cross-examine all witnesses called and to call evidence in defence and reply. Evidence.

(7) In the event of the non-attendance of the person whose conduct is the subject of such inquiry, the committee may, upon proof of personal service of the notice aforesaid in accordance with the provisions of this section, which proof of service may be by statutory declaration, proceed with the subject matter of the inquiry in his absence and may make their report of the facts without further notice to such person. R.S.O. 1897, c. 176, s. 35. Proceeding in absence of accused.

(8) The notice required by subsection 5 shall be deemed to have been duly served in accordance with the provisions thereof if sent by registered mail, prepaid, to the address of the person required to be served, as last entered upon the register. 10 Edw. VII. c. 77, s. 3. Service of notice.

34. No action shall be brought against the Council or the committee for anything done *bona fide* under this Act, notwithstanding any want of form in the proceedings, but any person whose name has been ordered to be erased from the register may appeal from the decision of the Council to a Divisional Court, at any time within six months from the date of the order for such erasure, and the Court may, upon the hearing of the appeal, make such order as to the restoration of the name so erased or confirming such erasure, or for further inquiry by the committee or Council into the facts of the case, and as to costs as the Court shall deem just. R.S.O. 1897, c. 176, s. 36. Appeal from committee.

Procedure.

35. The appeal may be by motion, notice of which shall be served upon the Registrar, and shall be founded upon a copy of the proceedings before the committee, the evidence taken, the committee's report and the order of the Council in the matter, certified by the Registrar, and the Registrar shall, upon the request of any person desiring to appeal, and upon payment of the sum of five cents per folio furnish to any such person a certified copy of all proceedings, reports, orders and papers, upon which the committee have acted in making the order complained of. R.S.O. 1897, c. 176, s. 37.

Evidence before committee for erasing and restoring names.

36. Upon any inquiry under section 31 of this Act either party may, without leave or order, obtain from the Supreme Court a subpoena commanding the attendance and examination of any witness and also the production of any documents the production of which could be compelled at the trial of an action, to and before the committee and at the time and place mentioned in the subpoena; and disobedience to the subpoena shall be deemed a contempt of Court, but the person whose attendance is required shall be entitled to the like conduct money and payment of expenses and for loss of time as upon attendance at a trial. R.S.O. 1897, c. 176, s. 38.

Costs of proceedings.

37. In case of the erasure of a name under the preceding provisions of this Act, the Council may direct the costs of and incidental to such erasure to be paid by the party whose name has been directed to be erased, which costs shall first be taxed by one of the taxing officers of the Supreme Court upon whose certificate execution may issue for the collection of such costs by the College, out of the Supreme Court as upon a judgment in an action in such Court. R.S.O. 1897, c. 176, s. 39.

Rights of Registered Practitioners.

Rights of registered persons.

38. Every person registered under the provisions of this Act shall be entitled according to his qualification or qualifications to practice medicine, surgery or midwifery, or any of them, as the case may be, in Ontario, and to demand and recover in any Court reasonable charges for professional aid, advice and visits and the cost of any medicine or other medical or surgical appliances rendered or supplied by him to his patients. R.S.O. 1897, c. 176, s. 40.

Limitation of actions for negligence.

39. No duly registered member of the College of Physicians and Surgeons of Ontario shall be liable to any action for negligence or malpractice, by reason of professional services requested or rendered, unless such action is commenced within one year from the date when in the matter complained of such professional services terminated. R.S.O. 1897, c. 176, s. 41.

Publication of Register.

40.—(1) The Registrar shall from time to time under the direction of the Council cause to be printed and published a correct register of the names in alphabetical order according to the surnames, with the respective residences in the form set forth in Schedule C, or to the like effect, with the medical titles, diplomas and qualifications and the dates thereof, of all persons appearing on the register as existing on the day of publication; and such register shall be called "The Ontario Medical Register."

Register to be
printed and
published.

(2) A copy of such register for the time being purporting to be printed and published as aforesaid, shall be *prima facie* evidence in all Courts, and before all Justices of the Peace, and others, that the persons therein specified are registered according to the provisions of this Act, and, subject to the provisions of subsection 3 of this section, the absence of the name of any person from such copy shall be *prima facie* evidence that such person is not registered according to the provisions of this Act.

Register to be
prima facie
evidence in
all Courts.

(3) In the case of any person whose name does not appear in such copy, a certified copy under the hand of the Registrar, of the entry of the name of such person on the register, shall be evidence that such person is registered under the provisions of this Act. R.S.O. 1897, c. 176, s. 42.

Certified copy
of entry of
name.

Annual Fees and Certificates.

41.—(1) Every member of the College shall pay to the Registrar or to any person deputed by the Registrar to receive it, such annual fee, not being less than \$1 nor more than \$2, as may from time to time be determined by by-laws of the Council passed as in this section is provided, to be applied towards the general expenses of the College, which fee shall be due on and from the 1st day of January in the year in which the same is imposed; and such fee shall be deemed to be a debt due by each member to the College, and shall be recoverable with costs of suit in the name of the College of Physicians and Surgeons of Ontario, in the Division Court of the division in which the member resides.

Annual
fee.

(2) The Council may by by-law prescribe means of collecting and enforcing the payment of the said annual fee. R.S.O. 1897, c. 176, s. 43.

Collection of
fee.

42.—(1) Every registered medical practitioner shall obtain from the Registrar annually, before the last day of December in each year, a certificate under the seal of the College, that he is a duly registered medical practitioner.

Medical
practitioners
to take out
annual
certificates.

(2) Upon payment of all fees and dues payable by such medical practitioner to the College the Registrar shall write his name on the margin of the certificate and the date thereof

Issue of
certificate

and the certificate shall be deemed to be issued only from such date.

Certificate not to issue until fees paid.

(3) No certificate shall be issued to any practitioner who is indebted to the College for any sums payable to the College, nor until the annual fee for such certificate prescribed by the by-laws of the College under this Act is paid.

Penalty for not taking out annual certificate.

(4) If a practitioner omits to take out such annual certificate he shall not be entitled thereto until he pays to the College the certificate fee as aforesaid, together with any other fees or dues which he owes to the College.

Erasure of name where default made for 12 months.

(5) After twelve months' default in taking out such certificate, and if two months' notice of such default be given by registered letter addressed to the registered address of such defaulter, the Registrar shall, if payment has not been made by the defaulter, erase his name from the register, and the provisions of this Act as to unregistered medical practitioners shall forthwith apply to such medical practitioner.

Re-registration upon payment of arrears.

(6) Such medical practitioner may, unless otherwise disqualified under this Act, at any time after his name is so erased by the Registrar, obtain re-registration by applying to the Registrar and paying all arrears of fees and dues owing to the College, under this Act, and taking out his certificate as herein provided, and he shall be thereupon re-instated to the full privileges enjoyed by other registered medical practitioners under this Act.

Proviso.

(7) Any fees properly charged by such medical practitioner during the time in which he was in default in payment of any fees or dues to the College shall be legally recoverable upon production of the certificate of registration at the time of suit. R.S.O. 1897, c. 176, s. 44.

Power of Council in respect of the provisions of ss. 41, 42.

43.—(1) The provisions of sections 41 and 42 shall only continue in force so long as a by-law of the Council, adopting the same remains in force; and the Council may repeal such by-law and may by by-law from time to time re-enact the said provisions in whole or in part, or with such modifications as the Council deems proper, subject always to the limit prescribed by section 41.

Who may vote on by-laws under this section.

(2) No member of the Council shall be entitled to vote on any by-law under this section except the elected members of the Council, nine of whom at least must be present at the passing of the by-law. R.S.O. 1897, c. 176, s. 45.

OFFENCES AND PENALTIES.

Those entitled to register, and neglecting to do so.

44. Any person entitled to be registered under this Act but who neglects or omits to be so registered, shall not be entitled to any of the rights or privileges conferred by registration, so long as such neglect or omission continues.

and he shall be liable to all the penalties imposed by this Act, or by any other Act in force against unqualified or unregistered practitioners. R.S.O. 1897, c. 176, s. 46.

45. If the Registrar makes or causes to be made any wilful falsification in any matter relating to the register, he shall incur a penalty of \$50, and shall be disqualified from again holding the office of Registrar. R.S.O. 1897, c. 176, s. 47. Penalty on Registrar for falsification.

46.—(1) If any person procures or causes to be procured his registration under this Act, by means of any false or fraudulent representation or declaration, either verbal or in writing, the Registrar, upon the receipt of sufficient evidence of the falsity or fraudulent character of the said representation or declaration, shall represent the matter to the Council, and upon the written order of the President, attested by the seal of the College, shall erase the name of such person from the register, and make known the fact and cause of the erasure by notice to be published in the *Ontario Gazette*. Penalty for obtaining registration by fraud.

(2) After such notice has appeared the person whose name has been erased as aforesaid shall cease to be a member of the College and shall cease to enjoy any of the privileges conferred by registration under this Act, and shall not be entitled to enjoy the same at any future time, without the express sanction of the Council. Consequences of erasure.

(3) If any person wilfully procures or attempts to procure himself to be registered under this Act, by making any false or fraudulent representation or declaration, either verbally or in writing, he shall on conviction thereof before any Justice of the Peace incur a penalty not exceeding \$100; and every person knowingly aiding and assisting him therein shall for such offence on conviction thereof incur a penalty of not less than \$20 nor more than \$50. R.S.O. 1897, c. 176, s. 48. Penalty.

47. No person not registered shall practise medicine, surgery or midwifery for hire, gain or hope of reward; and if any person not registered pursuant to this Act, for hire, gain or hope of reward practises or professes to practise medicine, surgery or midwifery, or advertises to give advice in medicine, surgery or midwifery, he shall incur a penalty of not less than \$25 nor more than \$100. R.S.O. 1897, c. 176, s. 49. Penalty for practising without registration.

48. Any person who wilfully or falsely pretends to be a Physician, Doctor of Medicine, Surgeon or general practitioner, or assumes any title, addition or description other than he actually possesses and is legally entitled to, shall incur a penalty of not less than \$10 nor more than \$50. R.S.O. 1897, c. 176, s. 50. Penalty for falsely pretending, etc.

Penalty for using title implying registration.

49. Any person not registered pursuant to this Act who takes or uses any name, title, addition or description implying or calculated to lead people to infer, that he is registered under this Act, or that he is recognized by law as a Physician, Surgeon, Accoucheur, or a Licentiate in Medicine, Surgery or Midwifery, shall incur a penalty of not less than \$25 nor more than \$100. R.S.O. 1897, c. 176, s. 51.

Not entitled to recover charges unless registered.

50. No person shall be entitled to recover any charge in any Court for any medical or surgical advice, or for attendance, or for the performance of any operation, or for any medicine which he may have prescribed or supplied, unless he produces to the Court a certificate that he is registered under this Act; but this section shall not extend to the sale of any drug or medicine by any duly authorized chemist or druggist. R.S.O. 1897, c. 176, s. 52.

Public appointments only conferred on registered persons.

51. No person shall be appointed as medical officer, physician or surgeon in any branch of the public service of Ontario, or in any hospital or other charitable institution not supported wholly by voluntary contributions, unless he is registered under the provisions of this Act. R.S.O. 1897, c. 176, s. 53.

Certificates by unregistered persons invalid.

52. No certificate required by any Act now in force, or that may hereafter be passed, from any physician or surgeon or medical practitioner, shall be valid unless the person signing the same is registered under this Act. R.S.O. 1897, c. 176, s. 54.

Application of Rev. Stat. c. 20.

53. The penalties provided by this Act shall be recoverable under *The Ontario Summary Convictions Act*, and that Act shall apply to prosecutions for offences against this Act.

Onus probandi.

54. In any trial under this Act the burden of proof as to registration shall be upon the person charged. R.S.O. 1897, c. 176, s. 57.

Evidence of registry and signature Registrar.

55. In all cases where proof of registration under this Act is required to be made, the production of a printed or other copy of the register, certified under the hand of the Registrar shall be sufficient evidence of all persons who are registered practitioners, in lieu of the production of the original register; and any certificate upon such printed or other copy of the register, purporting to be signed by any person in his capacity of Registrar under this Act shall be *prima facie* evidence that such person is the Registrar, without any proof of his signature or of his being in fact the Registrar. R.S.O. 1897, c. 176, s. 58.

56. Every prosecution under this Act shall be commenced within one year from the date of the alleged offence. Limitation of prosecutions.
R.S.O. 1897, c. 176, s. 59.

57. The Council by an order signed by the President having the seal of the College appended thereto, may stay proceedings in any prosecution under this Act where it is deemed expedient. Stay of proceedings.
R.S.O. 1897, c. 176, s. 60.

58.—(1) All penalties recovered under this Act shall be paid to the convicting Justice and by him paid to the Registrar of the College, and shall form part of the funds thereof. To whom penalties paid.

(2) Any person may be prosecutor or complainant under this Act, and the Council may allot such portion of the penalties recovered as may be expedient towards the payment of such prosecutor. Prosecutor.
R.S.O. 1897, c. 176, s. 61.

59. All moneys forming part of the Council funds shall be paid to the Treasurer, and may be applied to carry this Act into execution. Council funds.
R.S.O. 1897, c. 176, s. 62.

APPLICATION OF CANADA MEDICAL ACT.

60. Subject to the provisos and conditions therein contained, the Canada Medical Act, Revised Statutes of Canada 1906, chapter 137 and amendments thereto are accepted and shall apply to the Province of Ontario, and registration by the Medical Council of Canada shall be accepted as equivalent to registration for the like purposes under this Act. Application of R.S.C. c. 137.
2 Geo. V. c. 29.

SCHEDULE A.

(Sections 6 and 16.)

TERRITORIAL DIVISIONS.

1. Counties of Essex, Kent and Lambton.
2. Counties of Elgin, Norfolk and Oxford.
3. County of Middlesex.
4. Counties of Huron and Perth.
5. Counties of Waterloo and Wellington.
6. Counties of Bruce, Grey, Dufferin and Simcoe.
7. Counties of Wentworth, Halton and Peel.
8. Counties of Lincoln, Welland, Haldimand and Brant.
9. Districts of Parry Sound, Nipissing, Sudbury, Temiskaming, Algoma and Manitoulin.
10. Districts of Thunder Bay, Kenora and Rainy River.
11. That part of the City of Toronto lying east of Yonge street
12. That part of the City of Toronto lying west of Yonge street.

13. Counties of Ontario, Victoria and York, exclusive of Toronto, and the District of Muskoka.
14. Counties of Northumberland, Peterborough, Durham and Haliburton.
15. Counties of Prince Edward and Hastings and the Electoral District of Lennox.
16. Counties of Frontenac, and Renfrew and the Electoral District of Addington.
17. Counties of Leeds, Grenville, Dundas and Stormont.
18. Counties of Carleton, Russell, Prescott, Glengarry and Lanark.

10 Edw. VII. c. 77, s. 4 (1).

SCHEDULE B.

(Sections 24 and 25).

QUALIFICATIONS FOR REGISTRY.

1. License to practise Physic, Surgery and Midwifery, or either, within Upper Canada, granted under the Acts of Upper Canada, 59 Geo. III., c. 13, and 8 Geo. IV., c. 3, respectively.

2. License or diploma granted under 2 Vict., c. 38, or under the Consolidated Statutes for Upper Canada, chapter 40, or any Act amending the same.

3. License or authorization to practise Physic, Surgery and Midwifery, or either, within Lower Canada, whether granted under the Ordinance 28 Geo. III., c. 8, or under the Act 10 and 11 Vict., c. 26, and the Acts amending the same, or under chapter 71 of the Consolidated Statutes for Lower Canada, or any Act amending the same.

4. Certificate of Qualification to practise Medicine, Surgery and Midwifery, or either, granted by any of the Colleges or bodies named or referred to in section 6 of this Act.

5. Medical or surgical degree or diploma of any University or College in His Majesty's Dominions, or of such other Universities or Colleges as the Council may determine.

6. Certificate of registration under the Imperial Act, 21 and 22 Vict., c. 90, known as "The Medical Act," or any Act amending the same.

7. Commission or warrant as Physician or Surgeon, in His Majesty's military service.

8. Certificates of qualification to practise under any of the Acts relating to Homœopathy or the Eclectic system of Medicine.

R.S.O. 1897, c. 176, Sched. B.

SCHEDULE C.

(Section 42).

FORM OF REGISTER.

Name.	Residence.	Qualifications and additions.
A. B.	Toronto, County of York	M.A., M.D., Toronto University.
C. D.	Kingston, County of Frontenac	M.A., M.D., Queen's University.
E. F.	Etobicoke, County of York...	Licentiate, Medical Board.
G. H.	Toronto.....	do Toronto School of Medicine.

R.S.O. 1897, c. 176, Sched. C.

CHAPTER 162.

An Act respecting the Study of Anatomy.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Anatomy Act*. 1 Geo. V. c. 38, s. 1.

Interpretation.

2. In this Act,

"Medical School."

"Medical School" shall mean and include the Faculties of Medicine of the University of Toronto, of Queen's University and of the Western University, the Hamilton School of Anatomy and any other institution which the Lieutenant-Governor in Council may declare to be a medical school. 1 Geo. V. c. 38, s. 2.

Appointment of Inspectors of Anatomy.

3. The Lieutenant-Governor in Council may appoint a General Inspector of Anatomy for Ontario and local Inspectors for such places as may be deemed advisable, and may make regulations defining the duties of the General Inspector and imposing duties on the local Inspectors in addition to the duties imposed by this Act and otherwise for carrying out the provisions of this Act, and may fix the fees to be received by the General Inspector and local Inspectors for services performed under this Act and under such regulations. 1 Geo. V. c. 38, s. 3.

Disposal of certain bodies for study of anatomy.

4.—(1) The body of any dead person found publicly exposed or sent to a public morgue, upon which a coroner after having viewed it shall deem an inquest unnecessary or of any person who immediately before death was supported in and by any public institution, shall be immediately placed under the control of the local Inspector of Anatomy.

Where not claimed.

(2) Unless such body within twenty-four hours after being so found or sent to a public morgue, or after death where the death takes place in a public institution, is claimed by

(a) a relative or a *bona fide* friend, or

(b) a person who produces an order made under subsection 3 and pays \$5 to defray the funeral expenses, or

(c) in the case of the body of a person who was supported in a county house of refuge by a county councillor,

the same shall be delivered by the local Inspector to some person qualified as hereinafter provided.

(3) An order, Form 1, may be obtained from the police ^{Order by} magistrate, or where there is no police magistrate, from a ^{Magistrate.} justice of the peace having jurisdiction in the locality.

(4) This section shall not apply to the body of a lunatic ^{Not to apply} who has died in a Provincial hospital for the insane. ^{to body} of lunatic. 1 Geo. V. c. 38, s. 4.

5.—(1) It shall be the duty of the relative or friend to ^{Duty of} whom a dead body is delivered, under the provisions of section ^{interment.} 3, to cause it to be decently interred, or he may, upon payment to them of \$5, require the authorities under whose care the dead body was to inter it.

(2) A dead body delivered to a county councillor shall be ^{Idem.} decently interred at the expense of the county. 1 Geo. V. c. 38, s. 5.

6. The persons qualified to receive such unclaimed bodies ^{To whom} shall be the teachers of anatomy or surgery in a medical ^{unclaimed} school; and if there is any medical school in the locality ^{bodies shall} where there is a body to be delivered to persons so qualified, ^{be delivered.} such school shall have the first claim to the body. 1 Geo. V. c. 38, s. 6.

7.—(1) Any medical school obtaining a body shall keep ^{Body delivered} and preserve the same for not less than fourteen days, and ^{to medical} in the event of a relative or *bona fide* friend claiming it within ^{school may} that time the medical school shall deliver the body to such ^{be claimed} relative or friend upon receipt of the reasonable costs and ^{by friends.} charges for preserving and keeping the same, not to exceed \$10.

(2) Every such medical school shall keep such records as ^{Records.} may be prescribed by the regulations, and the same shall at all times be open to inspection by the General Inspector and by a local Inspector. 1 Geo. V. c. 38, s. 7.

8. Every local Inspector of Anatomy shall

- (a) keep a register showing the name, age, sex, birth-place and religious denomination of every person whose unclaimed body has been received by him, and the name of the medical school to which such body was delivered, with the date of delivery; ^{Duties of} ^{local Inspector.} ^{Register of} ^{subjects.}
- (b) keep a register of the medical schools qualified to ^{Register of} receive and desirous of receiving bodies for the ^{schools.} instruction of students;

Distribution
of subjects.

- (c) subject to the provisions of section 6 distribute all bodies, in rotation, to such schools in proportion to the number of persons actually engaged in the study of human anatomy in each school, as shown by their official registers, which he shall be allowed to inspect;

Inspection of
rooms.

- (d) inspect the authorized practical anatomy rooms in his locality at least once in every six weeks, and direct the removal and decent interment of any remains that he deems it advisable to have interred;

Keeping
registers open.

- (e) keep his registers open for the inspection of any registered medical practitioner who may desire to inspect them;

Entries in
morgue
register.

- (f) enter in the morgue register, for the purpose of identification, a description of every body received by him, and of the clothing and effects found thereon, and the name of the medical school to which such body was delivered;

Report to
General
Inspector.

- (g) furnish to the General Inspector the name of the deceased and of the school to which the body was sent. 1 Geo. V. c. 38, s. 8.

Notification
of appoint-
ment.

9. Every local Inspector shall, without delay, give notice of his appointment to all persons mentioned in sections 10 to 13. 1 Geo. V. c. 38, s. 9.

Coroner to
give notice to
Inspector of
bodies found
exposed.

10. Every coroner, whether he does or does not hold an inquest on a body found publicly exposed, to which his attention has been called, and which is not claimed in accordance with section 4, shall give notice to the local Inspector, if there is one, and if there is none, he shall cause the body to be interred at the expense of the municipality in which it was found. 1 Geo. V. c. 38, s. 10.

Notice to be
given to
Inspector by
person in
charge of
morgue.

11. Where the body is placed in a public morgue the person in charge of the morgue shall forthwith give notice thereof to the local Inspector. 1 Geo. V. c. 38, s. 11.

Notice to be
given to In-
spector by
head of
municipality.

12. The head of any municipality in which a dead body to which this Act applies is found and of which he has notice shall cause notice thereof to be given within twenty-four hours to the local Inspector. 1 Geo. V. c. 38, s. 12.

Notice to be
given to In-
spector by
superinten-
dents of
public
institutions.

13.—(1) The superintendent of every public institution to which this Act applies shall, upon the death of an inmate of the institution, give notice thereof within twenty-four hours to the local Inspector.

(2) Every such superintendent shall keep a register showing the name, age, sex, birthplace and religious denomination of each person whose body is disposed of under the provisions of this Act, and the school to which such body is delivered, and shall file all documents furnished by persons claiming bodies, and such register and documents shall be open for inspection.

Register to be kept by superintendent.

(3) No superintendent shall deliver a body to a medical school except on the written order of the local Inspector.

1 Geo. V. c. 38, s. 13.

Body only to be delivered to school on order.

14. A medical school desiring to avail itself of the benefits of this Act shall give a bond to the General Inspector in the sum of \$80, with two sufficient sureties to his satisfaction in the sum of \$40 each, for the decent interment of the bodies after they have served the purposes required; and thereupon the General Inspector shall deliver to such school a written authority to open a practical anatomy room entitled to the benefits of this Act. 1 Geo. V. c. 38, s. 14.

Medical schools availing themselves of this Act to give security.

15. Every person who neglects to discharge the duties imposed upon him by this Act or any regulation made thereunder, or who contravenes any provision thereof, shall incur a penalty of not more than \$20 for every such offence.

1 Geo. V. c. 38, s. 15.

Penalty for neglect of duty.

16. No person shall send or take a dead body out of Ontario for surgical or practical anatomical purposes, and every person contravening the provisions of this section shall for each offence incur a penalty of \$100. 1 Geo. V. c. 38, s. 16.

Removal of bodies from Province for purposes of anatomy prohibited.

17. The penalties imposed by or under the authority of this Act shall be recoverable under *The Ontario Summary Convictions Act*. 1 Geo. V. c. 38, s. 17.

Recovery of penalties. Rev. Stat. c. 90.

18. Subject to the provisions of this Act, any unclaimed dead body found within the limits of a city, town, village or township shall be interred at the expense of the corporation thereof, but such corporation may recover such expense from the estate of the deceased or from any person whose duty it was to inter such dead body. 1 Geo. V. c. 38, s. 18.

Burial of unclaimed bodies.

FORM 1.

(Section 4.)

THE ANATOMY ACT.

To all whom it may concern:

Whereas *A. B.* of *(here state the name, residence and occupation of the person by whom or on whose behalf the order is applied for)* has satisfied me that he is a relative *(or bona fide friend)* of *C. D.* deceased, and is entitled to have his body delivered to him for the purpose of interment.

I hereby authorize and order every person and authority having the present custody or control of the body forthwith upon presentation of this order to deliver it to the said *A. B.* for interment.

Witness my hand and seal as Police Magistrate *(or Justice of the Peace)* of and for *(as the case may be)*
this day of 19 .

1 Geo. V. c. 38, Form 1.

CHAPTER 163.

An Act respecting Dentistry.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Dentistry Act*. 1 Geo. V. Short title.
c. 39, s. 1.

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO.

2. The Royal, College of Dental Surgeons of Ontario hereinafter called "the College," is continued, and every person who holds a valid and unforfeited certificate of license to practise dentistry granted to him by such College shall be a member of the corporation. 1 Geo. V. c. 39, s. 2.

3.—(1) The College may purchase, take and possess for the purposes of the college, but for no other purpose, and, after acquiring the same, may sell, mortgage, lease or dispose of any real estate.

(2) Such real estate shall not be sold, mortgaged, leased or disposed of, except with the consent of the Board of Directors, given at a meeting duly called for that purpose.

(3) Notice of such meeting shall be given to every member of the Board by letter mailed to his last registered address, seven days before the day appointed for such meeting, stating the object thereof. 1 Geo. V. c. 39, s. 3.

BOARD OF DIRECTORS.

4.—(1) There shall continue to be a Board of Directors of the College, hereinafter called "the Board."

(2) The Board shall consist of eight members, all of whom shall be members of the College, and they shall hold office for two years, and any four of them shall form a quorum.

(3) One member shall be elected for each electoral district mentioned in Schedule A by the members of the College resident in such district.

(4) No person shall be qualified to be elected as a member for an electoral district unless he is a resident in it and is not a member of the faculty of the School of Dentistry.

One to be elected by the faculty.

(5) One member shall be elected by and from the faculty of the School of Dentistry.

Vacancies to be filled by the faculty.

(6) When a vacancy occurs in the representation of the faculty such vacancy shall be filled by the faculty. 1 Geo. V. c. 39, s. 4.

Electoral districts.

5. The Province of Ontario shall, for the purposes of this Act, be divided into the seven electoral districts described in Schedule A. 1 Geo. V. c. 39, s. 5.

Election of board.

6.—(1) An election of the Board shall be held on the second Wednesday of December in every second year, reckoning from the year 1912; and the present Board shall hold office until the first meeting of the new Board.

Qualification of voters.

(2) No person shall be qualified to vote at such election if he is in arrear in respect of any fees payable by him.

How votes to be given.

(3) The votes at such election shall be given by closed voting papers, Form 1, which shall be delivered, or, if sent by mail, shall be received, at the office of the Secretary of the College not earlier than the third Wednesday in November and not later than the second Wednesday in December in the year in which the election takes place.

Manner of election.

(4) The manner of holding such election with respect to notification of the electors of the time and place of holding the election, the nomination of candidates, the presiding officer thereat, the taking and counting of the votes, the giving of a casting vote in case of an equality of votes, and other necessary details shall be determined by by-law of the Board, and in default of such by-law, may be prescribed by the Lieutenant-Governor in Council. 1 Geo. V. c. 39, s. 6.

Resignations and vacancies.

7. Any member of the Board may at any time resign by notice in writing to the Secretary, and in the event of such resignation, or of a vacancy occurring by death or otherwise, the remaining members of the Board shall, from the members of the College resident in the electoral district in which the vacancy occurs, elect some fit and proper person to fill the vacancy for the remainder of the term. 1 Geo. V. c. 39, s. 7.

First meeting of Board.

8.—(1) Every newly elected Board shall hold its first meeting in the City of Toronto on the first Monday in May, or at such other time as may be fixed by the retiring Board, and the members of the Board shall hold office until the first meeting of their successors.

Subsequent meetings.

(2) Other meetings shall be held at such time and place as the Board appoints.

(3) Special meetings shall be called by the President on the request in writing of four members of the Board. Special meetings.

(4) All meetings shall continue from day to day until the business is finished, but no meeting shall continue for more than one week. 1 Geo. V. c. 39, s. 8. Duration of meetings.

OFFICERS OF BOARD.

9.—(1) Every Board shall at its first meeting elect a President, a Vice-President and a Registrar, and shall appoint a Treasurer and a Secretary, and such other officers as the Board considers necessary. President and officers.

(2) The Treasurer and the Secretary shall receive such remuneration for their services as the Board may fix. Remuneration of Treasurer and Secretary.

(3) The Board shall, if the President and Vice-President are absent, elect one of its members to preside at its meeting, who, while so presiding, shall have the same powers and exercise the same functions as the President. 1 Geo. V. c. 39, s. 9. President, etc., pro tempore.

10. There shall be paid to each member of the Board such fees for attendances as shall be fixed by by-law, not exceeding \$20 per day, and such reasonable travelling expenses as may be allowed by the Board. 1 Geo. V. c. 39, s. 10. Remuneration of members of Board.

11. All moneys under the control of the Board shall be paid to the Treasurer, and shall be applied for the purpose of the College. 1 Geo. V. c. 39, s. 11. Funds payable to the Treasurer.

SCHOOL OF DENTISTRY.

12. The School of Dentistry in the City of Toronto established by the Board is hereby continued. 1 Geo. V. c. 39, s. 12. School of Dentistry continued.

13.—(1) The Board may appoint one or more examiners for the matriculation or preliminary examination of all students entering the profession, or may accept in lieu of such matriculation or preliminary examination evidence that a student has passed any other satisfactory examination. Matriculation.

(2) Such examination shall be passed prior to entering into articles with a Licentiate of Dental Surgery. 1 Geo. V. c. 39, s. 13. Prior to articles.

14.—(1) The Board may prescribe a curriculum of studies to be pursued by students, and fix and determine the period for which every student shall be articulated and employed under a duly licensed practitioner, the examination neces- Curriculum for students, etc.

Fees. sary to be passed and the fees to be paid to the Treasurer before a certificate of license to practise dental surgery is issued.

Admission of other persons. (2) The Board may prescribe the conditions upon which dentists residing elsewhere than in Ontario, and students and graduates from other dental colleges may be admitted to membership in the College. 1 Geo. V. c. 39, s. 14.

Arrangements for education of students. 15. The College may, subject to the approval of the Lieutenant-Governor in Council, make arrangements with any university or college in Ontario for the attendance of students of the School of Dentistry at such lectures or classes in such university or college as may come within the course or subjects of instruction prescribed by the by-laws of the College, and may, subject to such approval, agree with any such university or college for the use of any library, museum or property belonging to or under the control of such university or college, and may affiliate with any such university or college, and may enter into all arrangements necessary to that end upon such terms as may be agreed upon. 1 Geo. V. c. 39, s. 15.

Designation of "Master." 16. The Board may by by-law provide that any licentiate in dentistry, being a member of the College of not less than five years' standing, shall receive the title of "Master of Dental Surgery," upon passing such examination and complying with such regulations as the Board may prescribe. 1 Geo. V. c. 39, s. 16.

BY-LAWS OF BOARD.

Power to make by-laws. 17.—(1) The Board shall make such by-laws as it may deem necessary for the proper and better guidance, government, discipline and regulation of the Board, the College, the members of the College and the profession of dental surgery, and the carrying out of the provisions of this Act, and such by-laws shall be published for two consecutive weeks in the *Ontario Gazette*, and shall not take effect until so published.

Annulment. (2) Such by-laws or any of them may be annulled by the Lieutenant-Governor in Council. 1 Geo. V. c. 39, s. 17.

CERTIFICATES OF LICENSE.

Qualification of certain practitioners. 18.—(1) All persons, being British subjects by birth or naturalization, who were engaged on the 4th day of March, 1868, in the practice of the profession of dentistry, or who, not having been residents of Ontario, had then had three years' experience in the practice of dentistry, shall be entitled to the certificate of "Licentiate of Dental Surgery," upon furnishing to the Board satisfactory proof of their having been

so engaged, or having had such experience, passing the required examination and paying the prescribed fees.

(2) All persons, being British subjects by birth or naturalization, who were continuously engaged for five years and upwards in established office practice, next preceding the 4th day of March, 1868, in the practice of the profession of dentistry in Ontario shall, upon satisfactory proof thereof, and upon payment of the prescribed fees, be entitled to such certificate without passing any examination. 1 Geo. V. c. 39, s. 18. Exemption of certain practitioners.

19.—(1) The Board, once at least in every year, shall cause to be held at a time fixed by the Board, an examination of the candidates for certificates and such titles as the Board has authority to grant. Annual examinations.

(2) At every such examination the candidates shall be examined orally or in writing or otherwise, by examiners to be appointed for that purpose by the Board, in such subjects as the Board shall prescribe. How and by whom conducted.

(3) The examiners shall receive such remuneration as may be fixed by the Board. Fees of examiners.

(4) Each examiner shall, if required, subscribe and take the following declaration: Declaration by examiners.

"I solemnly declare that I will perform my duty of Examiner without fear, favour, affection or partiality towards any candidate, and that I will not knowingly allow to any candidate any advantage which is not equally allowed to all." Form of declaration.

1 Geo. V. c. 39, s. 19.

20.—(1) If the Board is satisfied by the examination that the candidate is duly qualified to practise the profession of dental surgery, and that he is a person of integrity and good moral character, it shall, subject to the by-laws, grant him a certificate of license and the title of "Licentiate of Dental Surgery," which certificate and title shall entitle him to all the rights and privileges conferred by this Act. Certificate of qualification to practise. Designation of "Licentiate".

(2) The Board shall hold at least one meeting in each year in the City of Toronto for the purpose of granting such certificates and titles and for the transaction of such other business as may properly come before it. 1 Geo. V. c. 39, s. 20. Annual meeting.

21. Every certificate of license shall be sealed with the corporate seal of the College and signed by the President and Secretary of the Board; and the production of such certificate of license shall be *prima facie* evidence in all courts and upon all proceedings of its execution and contents. 1 Geo. V. c. 39, s. 21. Issue of certificate. Effect.

Return of
licenses
granted.

22. The Secretary of the Board shall, on or before the 15th day of January in each year, transmit to the Provincial Secretary a certified list of the names of all persons to whom certificates of license have been granted during the year ending on the next preceding 31st day of December. 1 Geo. V. c. 39, s. 22.

Prepayment
of examination
fees.

23. Every person desirous of being examined touching his qualifications for the practice of the profession of dental surgery shall, at least one month before such examination, pay to the Treasurer the prescribed fees, and deliver to the Secretary the Treasurer's receipt for the same, together with satisfactory evidence of his service under articles and compliance with the rules and regulations prescribed by the Board, and of his integrity and good morals. 1 Geo. V. c. 39, s. 23.

ANNUAL FEES.

Annual fees.

24.—(1) Every member of the College engaged in the practice of dental surgery in Ontario shall, on or before the first day of November in each year, pay to the Treasurer, or to a person deputed by him to receive the same, such annual fee, not less than \$1 and not more than \$3, as may be prescribed by by-law of the Board, towards the general expenses of the College, and such fee shall be recoverable by suit in the name of the Royal College of Dental Surgeons of Ontario in the Division Court of the division in which the member in default resides.

Result of
default in
payment of
annual fee.

(2) For any services rendered in the practice of dental surgery while he is in default in respect of any annual fee a member shall not be entitled to recover in any Court. 1 Geo. V. c. 39, s. 24.

PENALTY FOR PRACTISING WITHOUT LICENSE.

Prohibition
against
practising
without
certificate.

Or using
designation.

25.—(1) No person who is not a member of the College shall, by himself or by any other person, practise the profession of dental surgery, or perform any dental operation upon or prescribe any dental treatment for any person for hire, gain or hope of reward whether by way of fees, salary, rent, percentage of receipts or in any other form, or shall pretend to hold or take or use any name, title, addition or description implying that he holds a certificate of license to practise dental surgery, or that he is a member of the College, or shall falsely represent or use any title representing that he is a graduate of any Dental College.

Penalties.

(2) Every person who contravenes any of the provisions of this section shall, for the first offence, incur a penalty not exceeding \$50, and for every subsequent offence a penalty not exceeding \$100, and he shall not be entitled to sue or recover

in any Court for any services which he performed, or materials which he provided, in the ordinary and customary work of a dental surgeon.

(3) This section shall not prevent any duly articulated student^{Saving as to student.} of dental surgery from receiving instruction in clinics and practice under the personal supervision of a member of the college.

(4) The penalties shall be recoverable under *The Ontario Recovery and Summary Convictions Act*, and shall be paid over by the application.^{Rev. Stat. c. 90.} convicting justice to the Treasurer of the College. 1 Geo. V. c. 39, s. 25.

26. In any prosecution under section 25 the burden of^{Onus of proof.} proof of qualification shall be upon the defendant. 1 Geo. V. c. 39, s. 26.

SUSPENSION OR CANCELLATION OF CERTIFICATE.

27.—(1) The Board may suspend or cancel the certificate^{Power of Board to suspend or cancel certificates.} of license of a member of the College who has been heretofore or shall hereafter be convicted in Canada or elsewhere of an indictable offence if his conviction remains unreversed, or who has been or shall be guilty of any infamous, disgraceful or improper conduct in a professional respect; but this power^{Saving.} shall not be exercised if the conviction is for a political offence committed out of His Majesty's Dominions, or for an offence which, though indictable, ought not, either from its nature or from the circumstances under which it was committed, to disqualify the person convicted from practising dentistry.

(2) Where a member has been guilty of infamous, disgrace-^{Notwithstanding acquittal of criminal charge.} ful or improper conduct in a professional respect the power conferred by subsection 1 may be exercised, notwithstanding that he has been acquitted of a criminal charge in respect of the same matter.

(3) The Board may of its own motion, and upon the appli-^{Inquiry by Board.} cation of any four members of the College shall, cause inquiry to be made into any case in which it is alleged that a member of the College has become liable to the suspension or cancellation of his certificate of license for any of the causes mentioned in subsection 1.

(4) The Board shall appoint and shall always maintain^{Standing Committee of Inquiry.} a Committee of its own body for the purpose of ascertaining the facts of each case which may become the subject of inquiry.

(5) The Committee shall consist of such number of mem-^{Number of committee, quorum.} bers, not less than three nor more than five, as the Board may prescribe, three of whom shall be a quorum.

By-laws as to tenure of office proceedings.

(6) The Board may pass by-laws for determining the tenure of office of the members of the Committee and for the regulation and conduct of its proceedings.

Time, place and notice of meetings.

(7) Subject to the provisions of this section and of the by-laws of the Board the Committee may regulate the time and place for the holding, the manner of the convening and giving notice, and the conduct of its meetings.

Appointments to fill vacancies.

(8) If a vacancy occurs in the membership of the Committee the remaining members may appoint a member of the Board to fill the vacancy, and the member appointed shall hold office until the next meeting of the Board.

Quorum of Committee.

(9) Notwithstanding any vacancy in the Committee, so long as there are at least three members thereof, it shall be competent for the committee to exercise all or any of its powers.

Employment of assistance.

(10) The Committee may employ, at the expense of the Board, for the purposes of any inquiry, such legal or other assistance as the Committee may deem necessary.

Appearance by counsel.

(11) The member whose conduct is the subject of inquiry shall have the right to be represented by counsel.

Place of meeting.

(12) All meetings of the Committee for taking evidence or otherwise ascertaining the facts shall be held within the county or district in which the member whose conduct is the subject of inquiry resides.

Notice of meeting.

(13) At least fourteen days' notice of the meeting of the Committee for taking the evidence or otherwise ascertaining the facts shall be given to the member whose conduct is the subject of inquiry.

Contents of notice.

(14) The notice shall contain a statement of the matter which is to form the subject of the inquiry.

Evidence on oath.

(15) The testimony of the witnesses shall be taken under oath, which the Chairman or any member of the Committee may administer, and there shall be full right to cross-examine all witnesses called and to adduce evidence in defence and in reply.

Effect of non-appearance.

(16) If the person whose conduct is the subject of the inquiry though duly notified does not attend, the Committee may proceed in his absence, and he shall not be entitled to notice of the future meetings or proceedings of the Committee.

Subpœnas.

(17) The Committee and any party to the proceedings may obtain on *præcipe* from the Supreme Court a subpœna for the attendance of witnesses and the production of books, documents and things, and disobedience thereof shall be deemed a contempt of court.

(18) Witnesses shall be entitled to the like allowances Witness fees. as witnesses attending upon the trial of an action in the Supreme Court.

(19) The Committee shall report to the Board the evi- Report. dence adduced and the Committee's findings thereon.

(20) The Board may act upon the report of the Com- Acting upon report. mittee and may make such order thereon as the Board may deem just.

(21) Where the complaint is found to be frivolous or Costs of vexatious complaint. vexatious the Board may pay such costs as to it may seem just to a member whose conduct has been the subject of inquiry.

(22) Where the Board directs the certificate of license Costs of enquiry. of a member to be suspended or cancelled it may direct that the costs of and incidental to the inquiry be paid by such member, and after taxation of such costs by one of the taxing officers at Toronto, execution may issue out of the Supreme Court for the recovery thereof in like manner as upon a judgment in an action in that Court. 1 Geo. V. c. 39, s. 27.

28. No action shall be brought against the Board or the No action to lie against Board or Committee. Committee or any member thereof for anything done in good faith under this Act on account of any want of form or irregularity in their proceedings, but a member whose certificate of license has been suspended or cancelled may, at any time within six months from the date of the decision Appeal from decision of Board. of the Board, appeal from the decision of the Board to a Divisional Court. 1 Geo. V. c. 39, s. 28.

29. The practice and procedure upon and in relation to Practice and procedure on appeal. an appeal shall be similar to that provided by *The County Courts Act* as to appeals from the County Court, except that Rev. Stat. c. 59. the appeal shall be set down for argument at the first sittings of a Divisional Court which commences after the expiration of six months from the date of the decision complained of, and except that the proceedings and evidence shall be certified by the Registrar to the Appellate Division. 1 Geo. V. c. 39, s. 29.

30. The Board may direct the restoration of the certi- Restoration of certificate. ficate of license of any member whose certificate has been cancelled under the powers conferred by this Act upon such terms and conditions as the Board may deem just. 1 Geo. V. c. 39, s. 30.

31. Nothing in this Act shall affect or interfere with the Saving as to qualified medical practitioners. rights and privileges conferred upon legally qualified medical practitioners by *The Ontario Medical Act*. 1 Geo. V. c. 39, s. 31. Rev. Stat. c. 161.

SCHEDULE A.

ELECTORAL DISTRICTS.

Electoral District No. 1 shall be composed of the following counties: Carleton, Dundas, Frontenac, Glengarry, Grenville, Lanark, Leeds, Lennox and Addington, Prescott, Russell, Renfrew and Stormont.

Electoral District No. 2 shall consist of the following districts and counties:—Algoma, Durham, Haliburton, Hastings, Kenora, Manitoulin, Muskoka, Nipissing, Northumberland, Ontario, Prince Edward, Parry Sound, Peterborough, Rainy River, Sudbury, Temiskaming, Thunder Bay, Victoria and York except the city of Toronto.

Electoral District No. 3 shall consist of the City of Toronto

Electoral District No. 4 shall consist of the following counties:—Halton, Dufferin, Lincoln, Peel, Simcoe, Wentworth and Welland.

Electoral District No. 5 shall consist of the following counties: Brant, Elgin, Haldimand, Norfolk, Oxford, and Waterloo.

Electoral District No. 6 shall consist of the following counties:—Bruce, Grey, Huron and Wellington.

Electoral District No. 7 shall consist of the following counties: Essex, Kent, Lambton, Middlesex and Perth.

1 Geo. V. c. 39, Sched. A.

FORM 1.

(Section 6.)

VOTING PAPER.

Election 19

Electoral District No.

I, _____ of the _____ of _____
in the county or district of _____ member of the
Royal College of Dental Surgeons of Ontario, declare:—

1. That the signature affixed hereto is my proper handwriting.

2. That I am a voter in the Electoral District No. _____ and that
I vote for _____ of the _____ of _____ in the
county or district of _____ a member of the Royal College of Dental
Surgeons of Ontario and an elector in said Electoral District to
be a member of the Board of Directors of the College for the said
district.

3. That I have not in this election signed any other voting paper
and that this voting paper was executed on the day of the date
thereof.

Witness my hand this _____ day of _____ 19 ____.

1 Geo. V. c. 39, Form I.

CHAPTER 164.

An Act respecting Pharmacy.

HIS MAJESTY, by and with the advice and consent of the
the Legislative Assembly of the Province of Ontario,
enacts as follows:—

1. This Act may be cited as *The Pharmacy Act*. 1 Geo. V. Short title.
c. 40, s. 1.

2. The Ontario College of Pharmacy, hereinafter called ^{Ontario}
“the College,” is continued. 1 Geo. V. c. 40, s. 2. ^{College of}
^{Pharmacy.}

3. The College may purchase, take and possess for the pur- ^{Powers as to}
poses of the College, but for no other purpose, and after ^{real estate.}
acquiring the same, may sell, mortgage, lease or dispose of
any real estate. 1 Geo. V. c. 40, s. 3.

PHARMACEUTICAL COUNCIL.

4.—(1) There shall be a Council of the College to be ^{Council of}
called the Pharmaceutical Council, hereinafter called “the ^{whom}
Council,” which shall consist of thirteen members, who shall ^{composed.}
be elected as hereinafter provided, and shall hold office for
two years.

(2) The Council shall, subject to the by-laws thereof, ^{Powers of}
have sole control of the real and personal property of the ^{Council.}
College, and authority to grant certificates of competency to
conduct the business of a chemist or druggist, and to be
registered subject to the provisions of this Act.

(3) The members of the Council shall be elected from ^{Qualification.}
among those members of the College who are actively engaged
on their own account, and as proprietors, in the occupation
of pharmaceutical chemists, whether carrying on business as
retail, wholesale, or manufacturing chemists, and who reside
in Ontario. 1 Geo. V. c. 40, s. 4.

5.—(1) The Province of Ontario shall, for the purposes ^{Electoral}
of this Act, be divided into thirteen Electoral Districts ^{districts.}
described in Schedule A.

(2) The Council may re-arrange the geographical boun- ^{Re-arrange-}
daries of the Electoral Districts by by-law, approved of by ^{ment of.}
the Lieutenant-Governor in Council, but such re-arrangement
shall not be made more often than once in ten years. 1 Geo. V.
c. 40, s. 5.

Election of
Council.

6. An election of members of the Council shall be held on the first Wednesday in August in every second year, and the persons qualified to vote at the election shall be such persons as are members of the College, and are liable to pay the annual fee under this Act. 1 Geo. V. c. 40, s. 6.

Local
qualification.

7.—(1) One member of the Council shall be elected for each Electoral District by the members of the College, resident in such District, and he shall be a person carrying on the business of a chemist or druggist therein.

Manner of
election.

(2) The manner of holding such election, with respect to notification of the electors of the time and place of holding the election, the nomination of candidates, the presiding officer thereat, the taking and counting of the votes, the giving of a casting vote in case of an equality of votes, and other necessary details shall be determined by by-law of the Council, and in default of such by-law may be prescribed by the Lieutenant-Governor in Council. 1 Geo. V. c. 40, s. 7.

Resignations,
vacancies.

8. A member of the Council may at any time resign by notice in writing to the Registrar of the College; and in the event of such resignation or in the event of a vacancy occurring, the remaining members of the Council shall appoint a member of the College carrying on business in the Electoral District in the representation of which the vacancy occurs to fill the same. 1 Geo. V. c. 40, s. 8.

President
and officers.

9. The Council shall, at their first meeting, elect from among themselves a President and a Vice-President, and shall appoint a Registrar and such other officers as the Council may consider necessary. 1 Geo. V. c. 40, s. 9.

Meetings of
the Council.

10.—(1) The Council shall hold at least two meetings for the transaction of general business in every year, on the first Monday in June and the third Monday in November, at such place as they may by resolution appoint.

Notice of
meetings.

(2) Unless otherwise provided by by-law of the Council notice of such two meetings shall be given once a week for at least four weeks in the *Ontario Gazette*, and in at least two newspapers published in the City of Toronto. 1 Geo. V. c. 40, s. 10.

POWERS OF COUNCIL.

Powers of
Council as to
school of
instruction.

11.—(1) The Council may establish and carry on a school of instruction and appoint such professors, lecturers, instructors, officers, servants and employees therefor as may be deemed necessary.

School
continued.

(2) The school now established and carried on by the Council in the City of Toronto may be continued.

12.—(1) Subject to the disallowance thereof by the Lieutenant-Governor in Council, the Council may prescribe the subjects upon which candidates for certificates of competency shall be examined, and a curriculum of studies to be pursued by the students, establish a scale of fees, not to exceed \$10, to be paid by persons applying for examination, make by-laws, rules and orders for the regulation of its own meetings and proceedings and those of the College, and for the discipline, suspension or expulsion for cause of any student, and for the remuneration and appointment of examiners and officers, of the College, for defining the duties of such examiners and officers, for the payment of remuneration or indemnity to the members of the Council, for attending its meetings or upon the business of the College, and in respect to any other matters which the Council may deem requisite for the carrying out of this Act. 1 Geo. V. c. 40, s. 12 (1).

Curriculum
for students.

Discipline.

Remuneration
of members.

(2) Not more than five cents per mile for travelling expenses, or more than \$10 per diem for such days as a member is in actual attendance at a meeting of the Council, or at any meeting mentioned in subsection 3 or upon the business of the College including going to and returning therefrom, shall be allowed to him for such expenses and remuneration. 1 Geo. V. c. 40, s. 12 (2); 3-4 Geo. V. c. 32, s. 1.

Allowances
to members.

(3) The Council may appoint, from time to time, one or more representatives to attend meetings of Inter-Provincial or other Pharmaceutical Associations, and may pay out of the College funds to any one or more of such associations such sums as it may deem proper. 1 Geo. V. c. 40, s. 12 (3).

Appointment
of represen-
tative to
attend Inter-
Provincial
Associations.

13. The examinations of the College may be conducted by the members of the Council, or by persons appointed by the Council. 1 Geo. V. c. 40, s. 13.

Who may
examine.

WHO MAY APPLY FOR CERTIFICATES.

14.—(1) Subject to the rules, regulations and by-laws, the following persons and no others may be admitted as candidates for certificates of competency:

Qualification
of candidates
for certifi-
cates of
competency.

(a) Any person who has registered as an apprentice prior to the 23rd day of March, 1889, and who furnishes to the Council satisfactory evidence of having, in pursuance of a binding contract in writing for that purpose, served as an apprentice to a regularly qualified pharmaceutical chemist for a term of not less than three years;

(b) Any person of the full age of twenty-one years, registered as an apprentice on or after the 23rd day of March, 1889, who furnishes to the Council satisfactory evidence of having so served as an apprentice for a term of not less than four years

and who has attended two courses of lectures at the school, comprising pharmacy, practical pharmacy, chemistry, practical chemistry, materia medica, botany and reading and dispensing prescriptions, and such other subject or subjects as the Council may from time to time deem advisable. 1 Geo. V. c. 40, s. 14 (1); 3-4 Geo. V. c. 32, s. 2 (1).

Term of apprenticeship, how calculated.

(2) The period occupied in attending the first of the two courses of lectures may be counted as part of the term of apprenticeship.

Provision for death, etc., of employer.

(3) If any person, by reason of the death, failure in business, or removal of his employer, or from any other cause satisfactory to the Council, is unable to complete his term of apprenticeship he may enter into a new contract to complete the remainder of his unfulfilled term with any other regularly qualified pharmaceutical chemist.

Case of apprentices prior to 25th March, 1884.

(4) Nothing in this section shall apply to any person who had, prior to the 25th day of March, 1884, begun his apprenticeship with a regularly qualified pharmaceutical chemist without such binding contract in writing. 1 Geo. V. c. 40, s. 14 (2)-(4).

PRELIMINARY EXAMINATIONS.

Matriculation, requirements as to.

15.—(1) Every person desirous of becoming apprenticed shall, before the term of his apprenticeship begins, send to the Registrar the sum of \$1 together with a certificate of the Department of Education or of a University or College within Ontario, or other evidence satisfactory to the Council, showing that the applicant has passed an examination as required for university matriculation in the following subjects: arithmetic, algebra, British and Canadian history, English grammar, English composition, Latin authors and Latin composition. 1 Geo. V. c. 40, s. 15 (1); 3-4 Geo. V. c. 32, s. 3.

Power to change curriculum as to matriculation.

(2) The Council may make such changes in the subjects mentioned in the next preceding subsection as it may deem necessary in order to comply with the requirements of the Department of Education.

Extended time for passing in two subjects.

(3) If an applicant has failed to obtain pass standing in not more than two subjects he may be apprenticed and registered, and his term of apprenticeship shall then begin: provided that he completes his matriculation by passing in such two subjects at any subsequent examination before entering on the first course of lectures at the school.

Exception as to application of section.

(4) Except as to the fee payable, this section shall not apply to matriculants in arts or medicine in any British or Colonial University or College, or the holders of senior leaving or junior leaving certificates issued by the Department

of Education, or to persons who produce evidence of having passed an examination at least equal in point of standard to that of the latter.

(5) Upon complying with the provisions of this section ^{Applicant to be entitled to be registered.} the applicant shall be entitled to be registered as an apprentice. 1 Geo. V. c. 40, s. 15 (2)-(5).

REGISTRATION.

16. The Registrar shall keep a register, Form 1, of all ^{Register, how kept.} persons entitled to be registered as pharmaceutical chemists under this Act, and shall enter opposite the names of all registered persons who have died a statement of that fact, and shall make all necessary alterations in the addresses of persons registered, and shall cause to be printed and published, on or before the fifteenth day of June of each year, an alphabetical list of the members who were on the first day of June of that year entitled to carry on business as pharmaceutical chemists. 1 Geo. V. c. 40, s. 16.

17. Any person who has passed the prescribed examination to the satisfaction of the Council shall be entered upon the ^{Registration and membership.} register, and shall become a member of the College. 1 Geo. V. c. 40, s. 17.

18. All persons approved of by the Council who hold ^{Idem. Diplomas from other societies.} diplomas from the Pharmaceutical Society of Great Britain, or certificates from any Pharmaceutical College in the Dominion of Canada or elsewhere, may be registered as members of the College without the examination prescribed by this Act. 1 Geo. V. c. 40, s. 18.

19. No name shall be entered in the register unless the Registrar is satisfied by proper evidence that the person ^{Who may be entered on the register.} claiming is entitled to be registered; and any appeal from the decision of the Registrar shall be decided by the Council; ^{Appeal from decision of the registrar.} and any entry proved to the satisfaction of the Council to have been fraudulently or incorrectly made, may be erased from or amended in the register by order of the Council. ^{Correction of fraudulent entries.} 1 Geo. V. c. 40, s. 19.

20. Upon a person being registered he shall be entitled to receive a certificate, Form 2, under the corporate seal of the College, and signed by the Registrar, and such certificate shall be *prima facie* evidence in all courts, and upon all proceedings of whatever kind of its execution and contents. ^{Certificate of registration.} 1 Geo. V. c. 40, s. 20. ^{Evidence.}

21.—(1) There shall be payable to the Registrar, for the ^{Annual fees.} use of the College, on the first day of May of each year or such other day as the Council may fix by by-law, by every person registered and carrying on business as a pharmaceutical chemist and by every registered director and registered

manager of an incorporated company carrying on the business of a pharmaceutical chemist such sum not exceeding \$4 as may be determined by by-laws of the Council, and if such person or incorporated company carries on business in more than one shop each such person and his registered manager and each registered director and registered manager of such incorporated company shall pay a further sum, not exceeding \$4, as provided by the by-laws of the Council, for each additional place of business carried on.

Manager of additional place of business to be registered.

(2) No person shall manage or have charge of any such additional place of business unless he is registered as a pharmaceutical chemist. 1 Geo. V. c. 40, s. 21.

Who alone may act as Pharmaceutical Chemist.

22. Any person registered under section 17, and no other person, shall be entitled to be called a pharmaceutical chemist, and no person except a pharmaceutical chemist, or his registered apprentice, shall compound prescriptions of medical practitioners; but no person shall be entitled to any of the privileges of a pharmaceutical chemist, or of a member of the College, who is in default in respect to any fees payable by him by virtue of this Act. 1 Geo. V. c. 40, s. 22.

Erasing name of member on conviction of offence.

23. Upon a resolution of the Council being passed declaring that any person in consequence of his conviction of a crime or of an offence against this Act is, in the opinion of the Council, unfit to be on the register the Lieutenant-Governor in Council may direct that the name of such person shall be erased from the register, and the Registrar shall erase the same accordingly. 1 Geo. V. c. 40, s. 23.

Certificate to be publicly displayed.

24. Every pharmaceutical chemist carrying on business on his own account and every manager of each additional place of business shall display his certificate in a conspicuous position in his place of business, or the place of business which he manages. 1 Geo. V. c. 40, s. 24.

Retirement from business.

25. Every person registered as a pharmaceutical chemist shall, on retiring from business, give the Registrar notice in writing of the same, and his name shall be erased from the register, and he shall cease to enjoy any of the privileges of the College, and in default of such notice he shall remain liable for his annual registration fee; but any such person may resume business at any time after retiring therefrom upon giving notice in writing to the Registrar of his intention so to do, and upon payment of the annual registration fee for the then current year. 1 Geo. V. c. 40, s. 25.

Resumption.

Executors etc., carrying on business of deceased chemist, etc.

26. Nothing in this Act shall prevent the executor or administrator or the trustee of the estate of any person legally authorized to carry on and actually carrying on the business of a pharmaceutical chemist at the time of his death from continuing the business so long only as it is *bona fide* conducted by a pharmaceutical chemist registered under this

Act if such executor, administrator or trustee continues to pay the annual registration fee. 1 Geo. V. c. 40, s. 26.

PREPARATION OF COMPOUNDS.

27. Unless the label distinctly shows that the compound is prepared according to another formula every compound named in the British Pharmacopæia shall be prepared according to the formula directed in the latest edition published "by authority" until the College of Physicians and Surgeons of Ontario selects another standard and thereafter according to such standard. 1 Geo. V. c. 40, s. 27.

How compounds are to be prepared.

SALE OF POISONS, DRUGS OR MEDICINES.

28. No person shall,

- (a) sell or keep open shop for retailing, dispensing or compounding poisons, drugs or medicines except patent or proprietary medicines, (subject to section 42) and except turpentine, Epsom salts, senna, alum, borax, castor oil, sulphur, Glauber's salt, cream of tartar, carbonate of soda, bi-carbonate of soda, glycerine, carbonate of magnesia, citrate of magnesia, Rochelle salts, blue stone, copperas, saltpetre, spirits of nitre, rhubarb root, solution of ammonia, phosphate of soda, gum camphor, quinine, or chloride of lime, or sell or attempt to sell any of the articles mentioned in Schedule B; or
- (b) assume or use the title of "Chemist and Druggist," or "Chemist," or "Druggist," or "Pharmacist," or "Apothecary," or "Dispensing Chemist," or "Dispensing Druggist," or any sign, title or advertisement, implying or calculated to lead the public to infer that he is registered under this Act.

Restriction on sale of poisons, drugs or medicines. Exceptions.

Assumption of title of "Chemist," etc.

unless such person is registered under this Act and has a certificate under section 20. 1 Geo. V. c. 40, s. 28.

29. No incorporated company shall do any of the acts prohibited by the next preceding section unless the majority of the directors thereof are duly registered under this Act, and unless one of such directors personally manages and conducts such open shop, and has his name and certificate displayed in a conspicuous position therein, and no person not so registered shall in any way interfere with or take part in the management and conduct of such shop, and anything done or omitted which would be an offence under this Act if done or omitted by an individual shall be an offence by each of such registered directors, and by such company, and the prosecution of any one or more of them shall not be a bar to the prosecution of the other or others. 1 Geo. V. c. 40, s. 29.

Shops kept by incorporated companies.

What poisons may be sold by any person and when.

30.—(1) Nothing in this Act shall prevent the sale by persons not registered of Paris green, hellebore, tincture of iodine, arsenate of lead, carbolic acid, not exceeding a five per cent. solution, and London purple, if such articles are sold in well secured packages distinctly labelled with the name and address of the person preparing or putting up such packages and marked "poison."

Entry of sale of carbolic acid.

(2) A record shall be kept by the vendor in a book for that purpose of the name and address of each person to whom such carbolic acid is sold. 1 Geo. V. c. 40, s. 30.

Sale of cocaine, etc., except upon prescription prohibited.

31.—(1) No person or incorporated company shall sell by retail, furnish or dispose of alkaloid cocaine or its salts, or alpha or beta eucane or their salts, or any admixture of cocaine or eucane except upon the written prescription of a legally qualified medical practitioner, which shall be retained by the person who sells, furnishes or disposes of the same, and a record of the prescription shall be kept in a book which shall contain the name of the physician, the number of the prescription, the quantity sold, the name of the person for whom prescribed or supplied, and the date of the sale.

Prescription not to be filled more than once.

(2) The prescription shall not be filled more than once and no copy thereof shall be taken by or given to any person by the person who has the custody or control thereof.

Wholesaler not to sell except to pharmaceutical chemist.

(3) Alkaloid cocaine or its salts and alpha and beta eucane or their salts, or any admixture thereof, shall not be sold or disposed of by wholesale except upon the written order of a pharmaceutical chemist, a legally qualified medical practitioner, a licensed veterinary surgeon, or a licentiate of dental surgery, and unless the person so selling or disposing by wholesale affixes or causes to be affixed to the bottle, box, vessel or package containing the articles sold, and also upon the outer wrapper of the package as put up by the manufacturer, a label distinctly displaying the name and quantity of cocaine or its salts or alpha or beta eucane or its salts sold or disposed of and the word "poison," with the name, address and place of business of such person, all printed in red ink.

Record of sales to be kept by vendor.

(4) The person or incorporated company who so sells or disposes by wholesale shall before delivering any of such articles make or cause to be made in a book kept for that purpose an entry of the sale or disposal thereof, stating the date of sale or disposal, the quantity, name and terms in which the sale or disposition was made, the name in full and the address of the person to whom the sale or disposal was made, and the name of the person by whom the entry was made, and the books shall be preserved for at least five years after the date of the last entry therein. 1 Geo. V. c. 40, s. 31.

Certain articles to be deemed poisons.

32. The articles mentioned in Schedule B shall be deemed to be poisons within the meaning of this Act, and the Council may by resolution declare that any article in the resolution

named ought to be deemed a poison within the meaning of this Act, and thereupon the Council shall submit the resolution for the approval of the Lieutenant-Governor in Council, and if approved, such resolution and the approval thereof shall be published in the *Ontario Gazette*, and on the expiration of one month from such publication the article named in the resolution shall be deemed to be a poison within the meaning of this Act, and the same shall be subject to the provisions thereof, or such of them as may be directed by the Lieutenant-Governor in Council. 1 Geo. V. c. 40, s. 32.

33.—(1) No person or incorporated company shall sell any poison, either by wholesale or retail, unless the box, bottle, vessel, wrapper or cover in which the poison is contained is distinctly labelled with the name of the article and the word “poison,” and if sold by retail, then also with the name and address of the proprietor of the establishment in which such poison is sold; and no person shall sell any poison of those which are in the first part of Schedule B, or may hereafter be added thereto under section 32, to any person unknown to the seller unless introduced by some person known to the seller, and on every sale of any such article the person actually selling the same shall, before delivery, make an entry, Form 3, in a book to be kept for that purpose, stating the date of the sale, the name and address of the purchaser, the name and quantity of the article sold, the purpose for which it is stated by the purchaser to be required, and the name of the person who introduced him, to which entry the signature of the purchaser shall be affixed.

Certain
poisons
to be sold
only in a
certain
manner.

Regulations
to be ob-
served in
the sale of
poisons.

(2) Nothing in this section shall apply to any article when forming part of the ingredients of any medicine prescribed by a legally qualified medical practitioner if the medicine is labelled with the name and address of the seller and the ingredients thereof are entered with the name of the person to whom it is sold or delivered in a book to be kept for that purpose. 1 Geo. V. c. 40, s. 33.

Exceptions.
Imp.
Act 31 and
32 V. c. 121,
s. 17.

34. Any book by this act required to be kept shall be open to inspection by any police officer or constable, or any authorized agent of the College. 1 Geo. V. c. 40, s. 34.

Books to be
open to in-
spection by
constables
and agent
of college.

OFFENCES AND PENALTIES.

35. The prohibitions, restrictions and provisions contained in this Act as to selling poisons shall extend to exhibiting or offering for sale, or giving, furnishing or otherwise disposing of them. 1 Geo. V. c. 40, s. 35.

Selling to
include
giving, fur-
nishing or
disposing
of poisons.

36. No person shall wilfully or knowingly sell any article under the representation or pretence that it is a particular drug or medicine which it is not, and any person so doing,

Penalties
on wrongful
sales.

in addition to any other penalty to which he may be liable, shall incur the penalty prescribed by section 37. 1 Geo. V. c. 40, s. 36.

Penalties
for infringe-
ment of
this Act.

Rev. Stat. c. 90.

Application.

37. Any person who contravenes any of the provisions of this Act shall for the first offence incur a penalty of \$20 and for each offence committed subsequent to conviction for such first offence a penalty of \$50, recoverable under *The Ontario Summary Convictions Act*, and one-half shall be paid over by the convicting justice to the prosecutor and the other half to the Registrar for the use of the College. 1 Geo. V. c. 40, s. 37.

Onus of proof.

38. In any prosecution under this Act the burden shall rest on the defendant to prove that he is registered and holds a certificate under this Act, and to give evidence sufficient *prima facie* to prove that no unregistered person who personally takes any part in selling or dispensing drugs or medicines is interested with him in his sales thereof. 1 Geo. V. c. 40, s. 38.

Price of
articles sold
contrary to
this Act not
to be
recovered.

39. A person who sells any article in violation of the provisions of this Act shall not be entitled to recover any charges in respect thereof. 1 Geo. V. c. 40, s. 39.

ACT NOT TO AFFECT MEDICAL PRACTITIONERS.

Saving as to
qualified
medical
practitioners,
etc.
Rev. Stat.
c. 161.

40. Nothing in this Act shall affect or interfere with the rights and privileges conferred upon a legally qualified medical practitioner by *The Ontario Medical Act*, and where such medical practitioner desires to carry on the business of a pharmaceutical chemist, as defined by this Act, he shall not be required to pass the examination prescribed by the College, but he shall register as a pharmaceutical chemist and comply with all other requirements of this Act. 1 Geo. V. c. 40, s. 40.

Sales to
chemists,
etc., not
affected.

41. Nothing in this Act shall prevent any person from selling goods of any kind to a pharmaceutical chemist or to a legally qualified medical practitioner or to a veterinary surgeon, or shall prevent a legally qualified medical practitioner or a veterinary surgeon from supplying such medicine as he may prescribe, or, except as provided by section 31, shall interfere with the business of wholesale dealers in supplying poisons, or other articles in the ordinary course of wholesale dealing. 1 Geo. V. c. 40, s. 41.

Selling
patent
medicines.

42.—(1) Nothing in this Act shall interfere with or affect the making or dealing in patent or proprietary medicines except as in this section provided.

Analysis of
patent
medicines.

(2) The Provincial Board of Health may, if in its opinion there is reason to apprehend that any such medicine contains any poison mentioned in Schedule B in such quantity as

renders its use in the doses prescribed prejudicial to health or dangerous to life, cause an analysis of such medicine to be made by an analyst or other competent person appointed by the Lieutenant-Governor in Council.

(3) If on such analysis it is reported that the medicine contains any of such poisons in a quantity which renders its use in the doses prescribed prejudicial to health or dangerous to life the Board may give notice to the manufacturer or proprietor of the medicine, or to his agent or representative in Ontario, of the result of the analysis, and shall name a convenient time and place at which the manufacturer or proprietor may be heard before the Board in opposition to the report.

Notice to
manufacturer
of result of
analysis.

(4) If the Board is of the opinion that the medicine is in the doses prescribed prejudicial to health or dangerous to life the Board shall transmit to the Provincial Secretary the report of the analysis, and the objections, if any, made to the same by the manufacturer or proprietor, and their own report thereon, and if the Lieutenant-Governor in Council approves of the report of the Board, notice thereof may be given in the *Ontario Gazette*, and after such notice the provisions of this Act, with regard to poisons, shall apply to such patent or proprietary medicines, whether sold by persons registered in pursuance of this Act or by others. 1 Geo. V. c. 40, s. 42.

Transmitting
result of
analysis to
Provincial
Secretary.

HONORARY MEMBERS.

43. The Council may elect as honorary members of the College such persons as they may deem eminent for scientific attainments, but no such honorary member shall be entitled to vote at elections or carry on the business of pharmaceutical chemists unless registered as a pharmaceutical chemist. 1 Geo. V. c. 40, s. 43.

Honorary
membership.

DIVISION ASSOCIATIONS.

44. In each of the Electoral Districts there may be established a Division Association, which may be called the "Division Association" of such district, of which every member of the College residing in such district shall be a member, and each representative in the Council shall be *ex-officio* Chairman of such Division Association. 1 Geo. V. c. 40, s. 44.

Establish-
ment of
Division
Associations.

[As to the sale of liquor for medicinal purposes see The Liquor License Act, R. S. O. c 215.]

SCHEDULE A.

(Section 5 (1).)

ELECTORAL DISTRICTS.

No. 1 Division.—The Counties of Glengarry, Prescott, Stormont, Russell, Renfrew, Dundas, Carleton, Lanark and Grenville.

No. 2 Division.—The Counties of Leeds, Frontenac, Lennox and Addington, Prince Edward and Hastings.

No. 3 Division.—The Counties of Northumberland, Durham, Peterborough, Victoria, Haliburton and Ontario.

No. 4 Division.—That portion of the City of Toronto east of Spadina Avenue and Spadina Road.

No. 5 Division.—That portion of the City of Toronto west of Spadina Avenue and Spadina Road.

No. 6 Division.—The Counties of Simcoe and York and the Districts of Parry Sound and Muskoka.

No. 7 Division.—The Counties of Wellington, Halton, Peel, Dufferin and Perth.

No. 8 Division.—The Counties of Wentworth, Lincoln and Welland.

No. 9 Division.—The Counties of Brant, Waterloo, Haldimand and Norfolk.

No. 10 Division.—The Districts of Rainy River, Thunder Bay, Algoma, Nipissing, Sudbury, Temiskaming, Kenora and Manitoulin.

No. 11 Division.—The Counties of Elgin, Middlesex and Oxford.

No. 12 Division.—The Counties of Huron, Grey and Bruce.

No. 13 Division.—The Counties of Lambton, Kent and Essex.

1 Geo. V. c. 40, Schedule B.

FORM 1.

(Section 16.)

REGISTER.

Name.	Residence.	Qualifications.	Remarks.
A. B.	Kingston.	In business for three years prior to (<i>date</i>)	Dead.
C. D.	Toronto.	Examined and Certified, (<i>date</i>)	Erased by order of the Lieut.-Gov., (<i>date</i>).
E. F.	London.	Served apprenticeship and as assistant.	

1 Geo. V. c. 40, Form 1.

FORM 2.

(Section 20.)

CERTIFICATE OF REGISTRATION.

I hereby certify that *C. D.* having complied with the requirements of *The Pharmacy Act*, was on the day of A.D. 19 , duly registered as a Pharmaceutical Chemist, and is authorized to carry on the business of Chemist and Druggist in the Province of Ontario, from the day of 19 , to the day of , 19 .

[Corporate Seal]

R. F.,
Registrar of the Ontario College of Pharmacy.

1 Geo. V. c. 40, Form 3.

FORM 3.

(Section 33.)

ENTRY OF SALE.

Date.	Name of purchaser.	Name and quantity of poison sold.	Purpose for which it is required.	Signature of purchaser.	Address of purchaser.	Name of person introducing purchaser.	Name of medical practitioner on whose prescription furnished.

1 Geo. V. c. 40, Form 2.

SCHEDULE B.

(Section 28.)

PART I.

Acid, Hydrocyanic (Prussic),	Digitalin,
Aconite, and preparations and compounds thereof,	Ergot, and preparations and compounds thereof,
Antimony, Tartarated (Tartar Emetic),	Indian Hemp,
Arsenic, and preparations and compounds thereof, except Paris Green,	Mercury Bichloride (Corrosive Sublimate),
Atropine,	Morphine and its Salts and solutions,
Carbolic Acid, exceeding a five per cent. solution,	Nux Vomica,
Chloral Hydrate,	Oil of Cedar,
Cocaine, and its preparations,	Savin and all preparations thereof,
	Strychnine and its salts,
	Veratrine.

PART II.

Acetanilide (Antifebrin),	Mercury and preparations,
Acid, Oxalic,	Oil of Bitter Almonds,
Antimony, preparations of,	Oil of Pennyroyal and preparations,
Antipyrine,	tions,
Belladonna, and preparations and compounds thereof,	Oil of Tansy,
Calabar Beans,	Opium and preparations and compounds thereof, including laudanum, but not paregoric,
Cantharides,	Phenacetin,
Chloroform,	Phosphorous in a free state,
Columbian Spirits,	Pink Root,
Conium and preparations thereof,	Podophyllin (Resin Podophyllin),
Cotton Root and preparations thereof,	Potassium Bromide,
Cocculus Indicus (Fish Berry),	Potassium Cyanide,
Creosote,	Potassium Iodide,
Croton Oil and Seeds,	Rue and all preparations,
Elaterium,	St. Ignatius Beans,
Ether,	Santonin,
Euphorbium,	Sabadilla Seeds,
Formaldehyde (Formalin),	Scammony,
Goulard's Extract,	Sulfonal,
Hyoseyamus and preparations,	Trional,
Iodine and preparations,	Valerian,
	Verdigris,
	Zinc, Sulphate.

1 Geo. V. c. 40, Schedule A.

(See Order-in-Council dated June 7, 1907.)

7. SURVEYORS AND LAND SURVEYING.

CHAPTER 165.

An Act respecting Land Surveyors.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Ontario Land Surveyors Act*. 1 Geo. V. c. 41, s. 1. Short title.

INTERPRETATION.

2. In this Act,

Interpretation.

(a) "Minister" shall mean the Minister of Lands, "Minister."
Forests and Mines.

(b) "Surveyor" shall mean Ontario Land Surveyor. "Ontario Land Surveyor."
1 Geo. V. c. 40, s. 2.

REGISTRATION OF LAND SURVEYORS.

3.—(1) No person shall act as a surveyor of land in Ontario unless duly authorized to practise as a land surveyor according to the provisions of this Act, or so authorized before the passing thereof according to the laws then in force, and unless registered under the provisions of this Act. Who may act as land surveyor.

(2) Any person who contravenes this section shall incur a penalty of \$40. 1 Geo. V. c. 41, s. 3. Penalty.

ASSOCIATION OF ONTARIO LAND SURVEYORS

4.—(1) The Association of Ontario Land Surveyors hereinafter called "the Association" is hereby continued; and all persons who are now members of the Association shall continue to be members thereof subject to the by-laws of the Association and the provisions of this Act. Association continued.

(2) All persons duly authorized to practise as land surveyors shall, upon becoming duly registered as hereinafter provided, become members of the Association. 1 Geo. V. c. 41, s. 4. New members.

Powers as to real estate.

5. The Association may purchase, take and possess for the purposes of the Association, but for no other purpose, and after acquiring the same may sell, mortgage, lease or dispose of any real estate. 1 Geo. V. c. 41, s. 5.

Fines and fees.

6. All fines and fees payable under this Act, or under any by-law of the Association, shall belong to the Association. 1 Geo. V. c. 41, s. 6.

By-laws.

7.—(1) The Association may pass by-laws for—

- (a) the government, discipline and honour of its members;
- (b) the management of its property;
- (c) the examination and admission of candidates for the study or practice of the profession; and
- (d) all such other purposes as may be necessary for carrying out the objects of the Association.

Ratification.

(2) All by-laws shall be passed by the Council hereinafter provided for, and shall be ratified by the Association at the next annual general meeting, or at a special general meeting called for the purpose. 1 Geo. V. c. 41, s. 7.

Council of Management.

8.—(1) There shall be a Council of Management of the Association, hereinafter called “the Council,” consisting of the Minister, the President and the Vice-President of the Association, and six other elective members to be elected and hold office as hereinafter provided.

Chairman and officers.

(2) The Council shall elect annually one of its members as its Chairman, and shall appoint from among the members of the Association such other officers as may be deemed necessary for carrying out the objects of this Act, who shall hold office during the pleasure of the Council. 1 Geo. V. c. 41, s. 8.

Annual general meeting.

9.—(1) The annual general meeting of the Association shall be held in the City of Toronto on the third Tuesday of February in each year at such place as the Council may appoint.

Notice.

(2) Notice of such meeting shall be given by the Secretary-Treasurer to each member of the Association by letter posted to his registered address at least ten days before such meeting. 1 Geo. V. c. 41, s. 9.

President and officers of Association.

10.—(1) The members of the Association shall elect annually from among their number a President, Vice-President, Secretary-Treasurer, two Auditors and two members of the Council, and the Secretary-Treasurer shall also act as Secretary of the Board of Examiners.

(2) The President, Vice-President, Secretary-Treasurer, ^{Election at annual meeting.} Auditors and two members of the Council may be elected at the annual general meeting in each year, if their election is unanimous.

(3) If the election of any of such officers or members is ^{Election by ballot if demanded.} not unanimous and a ballot is demanded by any member of the Association entitled to vote at such election the President, or in his absence the Vice-President, or in the absence of both the Secretary-Treasurer, shall appoint two scrutineers to count the ballots, and the Secretary-Treasurer shall at such meeting receive nominations of candidates in respect of whom a ballot has been demanded, and the election shall take place in the manner hereinafter provided.

(4) All elections which are not unanimous shall be by ^{When required and how conducted.} ballot, and shall be conducted in the manner provided by the by-laws of the Association. 1 Geo. V. c. 41, s. 10.

11. Within one week after the meeting at which a ballot ^{Voting papers.} was demanded the Secretary-Treasurer shall send by post to each member of the Association, when his address is known, a voting paper, Form 1, with a list of the names of all candidates nominated, and also a list of the retiring members, and every vote cast for a person not so nominated shall be void. 1 Geo. V. c. 41, s. 11.

12. The votes shall be given by closed voting papers, Form 1, which shall be delivered to the Secretary-Treasurer at his ^{When to be delivered.} office, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, on any day between the second Tuesday of March and the first Tuesday of April in the year in which the election is held, and any voting papers received by the Secretary-Treasurer by post during that time shall be deemed to be delivered to him for the purposes of the election. 1 Geo. V. c. 41, s. 12.

13.—(1) The voting papers shall, upon the first Thursday ^{Counting the votes.} after the first Tuesday of April, be opened by the Secretary-Treasurer in the presence of the scrutineers, who shall examine and count the votes and keep a record thereof in a book to be provided by the Council.

(2) Any person entitled to vote at the election may be ^{Who may be present.} present at the counting of the votes.

(3) The qualified persons who have the highest number of ^{Who to be elected.} votes shall be declared elected. 1 Geo. V. c. 41, s. 13.

14.—(1) In case of equality of votes between two or more ^{Case of equality of votes.} persons which leaves the election of one or more officers or members of the Council undecided, the scrutineers shall forthwith put into a ballot box a number of papers with the names of the candidates respectively having such equality of
112 s.

votes written thereon, one for each candidate, and the Secretary-Treasurer shall draw from the ballot box, in the presence of the scrutineers, one or more of the papers sufficient to make up the required number, and the person or persons whose name or names are upon the papers so drawn shall be the officer or officers or the members of the Council, as the case may be.

Declaration
of result.

(2) Upon the completion of the counting of the votes the Secretary-Treasurer shall forthwith declare the result of the election and shall, as soon as conveniently may be, report the same in writing signed by himself and by the scrutineers to the President. 1 Geo. V. c. 41, s. 14.

Where vot-
ing paper
has too
many
names.

15. In the event of an elector placing more than the required number of names upon the voting paper for members of the Council the first names only, not exceeding the required number shall be counted. 1 Geo. V. c. 41, s. 15.

Qualifica-
tion of
voters.

16.—(1) The persons qualified to vote shall be such persons as are members of the Association and have paid all fees due from them to the Association.

Of officers.

(2) No person shall be eligible for election to any office or to the Council, or qualified to fill any vacancy thereon, or to appointment by the Council to any office, unless his fees have been paid and he is duly qualified under the provisions of this Act and the by-laws of the Association. 1 Geo. V. c. 41, s. 16.

Term of
office of
members of
council.

17.—(1) Except in the case of an appointment to fill the vacancy caused by the resignation, death or dismissal of a member of the Council all elected members of the Council shall hold office for three years and until their successors shall have been elected.

Vacancies.

(2) In case of the resignation, death or dismissal of the President, Vice-President, or any elective member of the Council the other members of the Council shall have power to fill any vacancy so caused, and the person so appointed shall hold office for the unexpired portion of the term. 1 Geo. V. c. 41, s. 17.

Disputed
elections.

18. In case of doubt or dispute as to who has been elected or as to the legality of the election, the duly elected officers and members shall be a committee to enquire and decide the doubt or dispute, and the persons whom they decide to have been elected shall be deemed to have been duly elected, and if the election is found to have been illegal the committee shall order a new election. 1 Geo. V. c. 41, s. 18.

BOARD OF EXAMINERS.

19.—(1) There shall be a Board of Examiners, hereinafter ^{Board of Examiners.} called the Board, for the examination of candidates for admission to study, and also for such other examinations as the Council may prescribe for candidates for admission to practise as surveyors.

(2) The Board shall consist of the Chairman of the Council, the Secretary-Treasurer, four other members of the Association to be appointed by the Council and two to be appointed by the Lieutenant-Governor in Council. ^{Of whom Board to consist.}

(3) The six members to be so appointed shall hold office ^{Term of office.} for three years.

(4) In case of the resignation, death or inability to act of any member of the Board, the Lieutenant-Governor in Council, if such member was appointed by him, and the Council, if such member was appointed by it, shall appoint a member of the Association to be a member of the Board of Examiners for the unexpired portion of the term. ^{To supply vacancies.}

(5) The Chairman of the Council shall be the Chairman ^{Chairman.} of the Board, and three members of the Board shall form a quorum. ^{Quorum.}

(6) The Council may also appoint competent persons to ^{Examiners.} assist the Board in any of the subjects of examination, and may fix the expenses and fees to be paid to any of the examiners, subject to the restrictions hereinafter contained in respect of payments to members of the Board.

(7) Each member of the Board shall take and subscribe ^{Oath of Examiner.} the following oath:—

I, of having been appointed a member of the Board of Examiners under *The Ontario Land Surveyors' Act*, do sincerely promise and swear that I will faithfully discharge the duties of such office without favour, affection or partiality. So help me God.

A.B.

Sworn before me at
this day of 19 .

1 Geo. V. c. 41, s. 19.

20. The Board shall meet at the office of the Minister on ^{Meetings, when and where to be held.} the first Monday of February in every year, and may adjourn such meeting from time to time. 1 Geo. V. c. 41, s. 20.

21. The Council shall, for each day's attendance, pay out ^{Payment of examiners.} of the funds of the Association to each member of the Board who attends any examinations such sum, not less than \$6 nor more than \$8, as the Council may by by-law determine, and his travelling expenses. 1 Geo. V. c. 41, s. 21.

APPRENTICES.

Qualification
for admis-
sion as an
apprentice
and ex-
amination
of applicant.

22. No person shall be admitted as an apprentice to a surveyor unless he has previously passed an examination to the satisfaction of the Board in penmanship, orthography, English grammar, arithmetic, algebra (including square-root, logarithms and quadratic equations), Euclid (first four books and deductions), plane trigonometry, spherical trigonometry, as far as and including the solution of right-angled triangles, mensuration, practical geometry (including the use of ruling-pen and the construction of plane and comparative scales), Canadian and general geography and Canadian history, and has obtained a certificate of his examination and of his proficiency from the Board. 1 Geo. V. c. 41, s. 22.

Examina-
tion and
certificate
fees.

23. Every applicant shall, before being so examined, pay to the Secretary-Treasurer of the Association the prescribed fees for the examination and certificate. 1 Geo. V. c. 41, s. 23.

Notice to be
given by
applicants.

24. Every applicant for examination previous to apprenticeship shall give one month's notice to the Secretary-Treasurer of his intention to present himself for examination, and shall pay to the Secretary-Treasurer the prescribed fee for receiving and entering such notice. 1 Geo. V. c. 41, s. 24.

QUALIFICATION FOR ADMISSION TO PRACTISE.

Qualification
for admis-
sion to
practise.

25. Except as hereinafter provided, no person shall be admitted to practise as a surveyor until he has attained the age of 21 years, and has passed an examination before the Board in the following subjects, viz., geometry, including the first six books of Euclid (with the exception of the last thirteen propositions of the fifth book), algebra, including progressions, plane and spherical trigonometry, mensuration of superficies, laying out and dividing land, descriptions by metes and bounds for deeds and other documents, the use and adjustment of surveying and levelling instruments, the laying out of curves, practical astronomy, including finding of time, latitude, longitude, azimuth, variation of the compass, and drawing meridian lines, *The Surveys Act*, *The Mining Act of Ontario*, *The Registry Act*, so far as it relates to plans, *The Municipal Act*, so far as it relates to roads, surveys and drainage, *The Municipal Drainage Act*, *The Ditches and Watercourses Act*, the theory and practice of levelling, the principal rules of evidence, drawing of affidavits, taking of field notes and preparing plans, the method of calculating the horse power of rivers and streams, the method of scaling logs and measuring timber, the rudiments of geology and mineralogy, elementary botany and the forest flora of Canada and the sufficiency of his surveying instruments, and has served regularly and faithfully, for three successive years, except as hereinafter provided, under an instrument in writing duly exe-

Rev. Stat.
c. 166.
Rev. Stats.
c. c. 32, 124, 192,
198, 260.

Apprentice-
ship.

cuted before two witnesses, as apprentice to a surveyor, duly admitted and practising as such, nor until he has received from him a certificate of his having so served during that period, or proves to the satisfaction of the Board that he has so served. 1 Geo. V. c. 41, s. 25.

26. An apprentice may, with the permission of the Board, attend the University of Toronto as a student in the Faculty of Applied Science and Engineering, or any school, college or university, the course of study in which is, in the opinion of the Board, similar to that in such Faculty for the purpose of taking any course of study which includes any of the subjects required for the final examination for admission to practise as a surveyor, but the total period of such apprenticeship and of such course of study shall not exceed four years from the date of the articles of apprenticeship, and not less than three of such four years shall be passed in the actual service of a practising surveyor. 1 Geo. V. c. 41, s. 26.

Attendance of apprentice at Toronto University or institution with similar course of study.

27. A person who has attained the age of 21 years and has practised as a land surveyor in any of His Majesty's Dominions other than Ontario, and satisfied the Board that the qualifications for practising required in such Dominion were similar to those required in Ontario, and produces to the Board his diploma or certificate, shall not be required to serve as an apprentice, or shall only be required to serve during such period, not exceeding three years, as the Board may deem requisite, after which he shall, on complying with the other requirements of this Act, have the right to undergo the final examination or such parts thereof as the Board may deem necessary, and, if found qualified, shall be admitted to practise, if the same privileges are granted in such Dominion to qualified land surveyors of Ontario. 1 Geo. V. c. 41, s. 27.

Admission of persons qualified in other British dominions.

Proviso.

28.—(1) The privilege of a shortened term of apprenticeship shall also be accorded to any graduate of the Royal Military College at Kingston, and to any graduate in Civil Engineering or in Mining Engineering of the University of Toronto, or McGill College at Montreal, or of the School of Mining at Kingston, and such person shall not be required to pass the preliminary examination for admission to apprenticeship, but shall only be bound to serve under articles with a practising surveyor, duly filed as required by section 31, during twelve successive months of actual practice, after which, on complying with all other requirements, he may undergo the examination for admission to practise.

Graduates of certain institutions.

(2) Such person at any time during his apprenticeship may, with the permission of the Board, attend the University of Toronto as a student in the Faculty of Applied Science and Engineering, or any school, college, or university, the course of study in which is, in the opinion of the Board, suffi-

Attendance at certain schools during apprenticeship.

ciently similar to that in such Faculty, for the purpose of taking any course of study which includes any subject required for the examination for admission to practise, but the total period of such apprenticeship, and of such course of study shall not exceed the period of two years from the date of the articles of apprenticeship as above mentioned, and not less than twelve months of the period of two years shall be passed in the actual service of a practising surveyor. 1 Geo. V. c. 41, s. 28.

Provision for death, etc., of employer.

29. If a surveyor dies or leaves Ontario, or is suspended or dismissed, or ceases to practise, his apprentice may complete his term of apprenticeship, under an instrument in writing, with any registered surveyor in actual practice. 1 Geo. V. c. 41, s. 29.

Instruments of apprenticeship may be transferred.

30. A surveyor may, with the consent of the apprentice, by an instrument in writing, transfer him to another registered surveyor in actual practice with whom he may serve the remainder of the term of his apprenticeship. 1 Geo. V. c. 41, s. 30.

Instruments binding to service to be filed, etc.

31.—(1) No instrument under which an applicant for admission to practise claims to have served shall avail to authorize his admission, unless it was transmitted to the Secretary-Treasurer within two months next after the date thereof, unless the Council for special reasons otherwise permits, nor unless the prescribed fee was paid at the time of transmitting the instrument.

Acknowledgment and filing.

(2) The Secretary-Treasurer shall acknowledge by post the receipt of all such instruments transmitted to him and shall keep the same filed in his office. 1 Geo. V. c. 41, s. 31.

ADMISSION OF CANDIDATES.

Notice by candidates for admission.

32. Every person desiring to be examined by the Board to be admitted to practise shall give notice thereof in writing to the Secretary-Treasurer at least one month before the meeting of the Board. 1 Geo. V. c. 41, s. 32.

Certificates of good conduct, etc.

33. Every person applying for admission to practise shall produce to the Board satisfactory certificates as to character for probity and sobriety, and before a certificate is granted shall perform such practical operations in the presence of the Board, and shall answer such questions on oath, which oath any member of the Board may administer, with regard to the actual practice of such applicant in the field, and with regard to his surveying instruments, as the Board may require. 1 Geo. V. c. 41, s. 33.

Certificate of qualification.

34.—(1) If the Board is satisfied as to the qualifications of the candidate, and his compliance with all the preliminary

requirements of this Act, it shall grant him a certificate, Form 2, and such certificate shall, on the applicant complying with the other requirements of this Act, entitle him to practise as a surveyor.

(2) The certificate shall be registered in the office of the Registration.
Provincial Secretary. 1 Geo. V. c. 41, s. 34.

35.—(1) Before receiving his certificate the applicant shall enter into a joint and several bond to His Majesty, with two sufficient sureties to the satisfaction of the Board, or the Chairman or Secretary thereof, in the sum of \$1,000, conditioned for the due and faithful performance of the duties of his office. Candidates to give security.

(2) The bond shall be deposited in the office of the Treasurer of Ontario and shall enure to the benefit of any person sustaining damage by breach of the condition thereof. Deposit of security.
1 Geo. V. c. 41, s. 35.

36.—(1) The applicant, after having been granted a certificate, shall also take and subscribe the oath of allegiance, and the following oath before the Board, or a member thereof specially deputed by the Board for that purpose:— Oaths of allegiance and office.

“I, A.B., do solemnly swear that I will faithfully discharge the duties of an Ontario Land Surveyor, according to law, without favour, affection or partiality: So help me God.”

(2) The oaths of allegiance and of office shall be deposited in the office of the Provincial Secretary. Fyling.
1 Geo. V. c. 41, s. 36.

SUSPENSION FOR MISCONDUCT.

37.—(1) The Council may suspend or dismiss from the Association any surveyor whom it finds guilty of gross negligence or of corruption in the execution of the duties of his office; but the Council shall not take action until a complaint made under oath has been filed with the Secretary-Treasurer, and a copy thereof forwarded to the person accused, nor shall the Council suspend or dismiss such surveyor without having previously summoned him to appear in order to be heard in his defence, nor without having heard the evidence offered in support of the complaint and on behalf of the surveyor. Dismissal or suspension of members.

(2) The evidence shall be taken under oath to be administered by the Chairman of the Council, or by the person acting as such in his absence, or by the Secretary, and shall be taken down by a stenographer as in the case of evidence taken in the Supreme Court. Evidence.

(3) A surveyor so dismissed or suspended may, within fourteen days after service upon him of a copy of the order or resolution of dismissal or suspension, appeal therefrom to a Divisional Court by giving seven days' notice to the Secre- Appeal from order of dismissal or suspension.

tary-Treasurer, and may require the evidence taken to be filed in the Central Office of the Supreme Court, and the costs of such appeal shall be in the discretion of the Court.

Extension
of time for
appealing.

(4) The Supreme Court or a Judge thereof may extend the time for appealing for a further period not exceeding fourteen days.

Setting down
appeal for
hearing.

(5) The appeal shall be set down to be heard at a sittings of the Court to be held within one month after the time, or the extended time, for appealing has expired.

Consequences
of dismissal

(6) Unless the order or resolution is set aside, or the Court or the Council otherwise orders, a surveyor so dismissed or suspended shall not have the right to practise as a surveyor until after the appeal has been disposed of except where the time for which he was so suspended has expired.

On conviction
of crime.

(7) The Council may suspend or dismiss from the Association any member who has been convicted of any crime, and cause his name to be removed from the register.

Restoration
of name to
register.

(8) The Council may direct the Registrar to restore to the register the name of any person or any entry erased therefrom, either without fee or on payment of such fee, not exceeding the arrears of fees due to the Association as the Council may fix. 1 Geo. V. c. 41, s. 37.

ATTENDANCE OF WITNESSES.

Power to
summon
witnesses.

38. On any enquiry concerning an election or the dismissal, suspension or restoration of any member a summons under the hand of the President, or of the Vice-President, or of any two members of the Council, for the attendance of a witness before the Council, shall have all the force of a subpoena; and any witness not attending in obedience thereto shall be liable to attachment in the Supreme Court. 1 Geo. V. c. 41, s. 38.

FEEES.

Tariff of
fees.

39. The following fees shall be paid to the Secretary-Treasurer:—

(a) By every person authorized to practise under the provisions of this Act on applying for registration, \$1;

(b) By each member of the association an annual membership fee of \$4;

(c) By each apprentice on transmitting to the Secretary-Treasurer the articles of apprenticeship, \$10;

(d) By each candidate for examination, with his notice thereof, \$1;

(e) By each candidate for the preliminary examination on presenting himself for examination, \$10;

(f) By each applicant obtaining a certificate to practise, \$32;

(g) For registering each transfer of articles, \$2;

(h) By each applicant obtaining a certificate to practise, for official notice in the *Ontario Gazette*, \$1.

1 Geo. V. c. 41, s. 39.

40. Every surveyor summoned to attend any civil or criminal Court, for the purpose of giving evidence in his professional capacity, or in consequence of any professional service rendered by him, shall be entitled to \$5 for each day he so attends, in addition to his travelling expenses, to be taxed and paid in the manner by law provided with regard to the payment of witnesses attending such Court. 1 Geo. V. c. 41, s. 40. Witness fees of surveyors.

REGISTRATION OF PERSONS ENTITLED.

41.—(1) The Secretary-Treasurer shall make and keep a correct register, Form 3, of all persons entitled to be registered under this Act, and shall enter opposite the name of any registered person who has died a statement of that fact, and shall make necessary alterations in the addresses of persons registered, and subject to this Act shall keep the register in accordance with the by-laws of the Association and the orders and regulations of the Council. How register to be kept.

(2) No person who neglects or omits to be so registered shall be entitled to any of the rights or privileges conferred by registration so long as such neglect or omission continues. Effect of omitting to register.

(3) A registered surveyor desiring to give up practice may have his name removed from the register upon giving written notice to the Secretary-Treasurer of such desire, and paying all fees due from him to the Association, and thereafter he shall not be liable to the Association for any annual or other fees, and may, upon like notice of his intention to resume practice and paying the annual fee for the year in which such notice is given, be again registered. Retirement from practice.

(4) No name shall be entered in the register except of persons authorized by this Act to be registered, nor unless the Secretary-Treasurer is satisfied by proper evidence that the person claiming to be entitled to be registered is so entitled, and any appeal from his decision shall be decided by the Council, and any entry which is proved to the satisfaction of the Council to have been fraudulently or incorrectly made shall be erased from or amended in the register by order of the Council. Rectification of entries.

(5) The Association may by by-law provide that any surveyor who has been in the actual practice of his profession for a period of thirty-five years or more, and has during the entire period been a duly qualified surveyor, may be exempted from payment of the annual membership fee. 1 Geo. V. c. 41, s. 41. Exemption from fees after long period of membership.

42. Any person who was duly authorized to practise as a surveyor of land in Ontario on the 14th day of April, 1892, who, through absence, illness or inadvertence, has omitted to become a member of the Association, may be admitted by the Omission to register through absence, etc.

Council to enrolment as a surveyor upon payment of the arrears of fees or such part thereof as the Council may direct. 1 Geo. V. c. 41, s. 42.

Restriction
of right to
use title.

43.—(1) Unless registered no person shall be entitled to take or use the name or title of Ontario Land Surveyor, either alone or in combination with any other word or words, or any name, title or description implying that he is registered under this Act.

Penalty.

(2) Any person who contravenes this section shall incur a penalty not exceeding \$20 for the first offence, and not exceeding \$50 for each subsequent offence. 1 Geo. V. c. 41, s. 43.

Register of
practising
surveyors.

44.—(1) The Secretary-Treasurer shall in every year cause to be printed, published and kept for inspection at his office, free of charge, a register, Form 4, in which shall be printed the names in alphabetical order, according to the surnames, with the respective residences, of all persons appearing on the general register on the first day of January in such year.

Evidence of
registration.

(2) A copy of such register, purporting to be so printed and published, shall be evidence in all Courts and before all justices of the peace and others that the persons therein mentioned are registered according to the provisions of this Act.

Certified
copy of
entry.

(3) In the case of any person whose name does not appear in such copy a certified copy under the hand of the Secretary-Treasurer of the entry of the name of such person in the register shall be like evidence that such person is registered under the provisions of this Act. 1 Geo. V. c. 41, s. 44.

FRAUDULENT REGISTRATION.

Penalty for
making
improper
entries.

45. If the Secretary-Treasurer wilfully makes or causes or allows to be made any falsification in any matter relating to the register he shall incur a penalty of not less than \$20 and not more than \$50. 1 Geo. V. c. 41, s. 45.

Penalty for
procuring
entry by
fraud.

46. Any person who wilfully procures or attempts to procure registration under this Act by making or producing or causing to be made or produced any false or fraudulent representation or declaration, either verbally or in writing, shall incur a penalty of not less than \$20 and not more than \$50, and the Council may remove the name of the offender from the register. 1 Geo. V. c. 41, s. 46.

RECOVERY OF FEES AND PENALTIES.

Recovery of
fees and
penalties.

47.—(1) All fees payable under this Act may be recovered as ordinary debts due the Association and all penalties imposed by or under the authority of this Act shall be recoverable under *The Ontario Summary Convictions Act*.

Rev. Stat.
c. 90.

(2) All penalties recovered under this Act shall immediately upon the recovery thereof be paid over by the convicting justice to the Secretary-Treasurer. Application of penalties.

(3) Any person may be prosecutor or complainant under this Act, and the Council may allot such portion of the penalty as it deems expedient to the prosecutor. 1 Geo. V. c. 41, s. 47. Who may be complainant.

NOTICES AND DOCUMENTS.

48.—(1) Except as herein otherwise provided all notices and documents required by or for the purposes of this Act to be sent by mail, if sent by registered post, shall be deemed to have been received at the time when the same would be delivered in the ordinary course of mail. Service of notices.

(2) Such notices and documents, when sent to a person registered under this Act, shall be deemed to be properly addressed if addressed to him according to his address in the register of the Association. 1 Geo. V. c. 41, s. 48. What to be deemed proper address.

HOW FUNDS TO BE APPLIED.

49.—(1) All money arising from fees payable on registration, or from the annual fees, or from the sale of copies of the register or otherwise shall be applied for defraying the expenses of the Association in accordance with such regulations as may be made by the Council. Application of funds.

(2) The Council may invest, in the name of the Association, any money not so expended in such securities as trustees may properly invest in, and the income derived therefrom shall form part of the ordinary income of the Association. 1 Geo. V. c. 41, s. 49. Investment.

50. The Secretary-Treasurer shall enter in books to be kept for that purpose a true account of all moneys by him received and paid, and such books shall be audited and submitted to the Council and to the Association when and so often as they may require. 1 Geo. V. c. 41, s. 50. Accounts of Association

FORM 1.

VOTING PAPER.

(Section 11.)

Association of Ontario Land Surveyors.

Election 19 .

I, of

in

a member of the Association of Ontario Land surveyors, do hereby declare that

(1) The signature hereto is in my proper handwriting.

(2) I vote for A. B., of , as (president, vice-president, secretary-treasurer, auditor or auditors, as the case may be).

(3) I vote for the following persons as members of the council of the association:—A. B., of and C. D., of

(4) I have signed no other voting paper at this election.

(5) This voting paper was signed on the day of the date thereof.

Witness my hand this day of , 19 ,

1 Geo. V. c. 41, Form 1.

FORM 2.

(Section 34.)

CERTIFICATE OF ADMISSION.

This is to certify that A. B. of has duly passed his examination before the Board of Examiners, and has been found qualified to fill the office and perform the duties of an Ontario Land Surveyor, he having complied with all the requirements of the law in that behalf. Wherefore the said A. B. is admitted to the said office and is by law authorized to practise as an Ontario Land Surveyor.

In witness whereof, we have signed this certificate at the City of Toronto, the day of , 19 .

C. D., Chairman.
E. F., Secretary.

1 Geo. V. c. 41, Form 2.

FORM 3.

(Section 41.)

REGISTER.

Name.	Residence. P.O.address.	Qualifica- tions and additions.	When admitted.	When ceased to practice.	When died, etc.

1 Geo. V. c. 41, Form 3.

FORM 4.

(Section 44.)

SURVEYORS' REGISTER, 1ST JANUARY, 19 .

Name.	Residence. P.O. address.	Qualifications and additions.

1 Geo. V. c. 41, Form 4.

CHAPTER 166.

An Act respecting the Survey of Lands.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- | | |
|--------------------|---|
| Short title. | 1. This Act may be cited as <i>The Surveys Act</i> . 1 Geo. V. c. 42, s. 1. |
| Interpretation. | 2. In this Act, |
| "Department." | (a) "Department" shall mean Department of Lands, Forests and Mines. |
| "Minister." | (b) "Minister" shall mean Minister of Lands, Forests and Mines. |
| "Original survey." | (c) "Original survey" shall mean a survey made under the authority mentioned in section 16. |
| "Surveyor." | (d) "Surveyor" shall mean Ontario Land Surveyor. 1 Geo. V. c. 42, s. 2. |

CERTAIN BOUNDARY LINES DECLARED VALID.

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| Confirmation of lines established or acts done under former enactments. | 3. All boundary or division lines legally established, and ascertained under the authority of Ordinances or Acts heretofore in force, shall remain good, and all other acts or things legally done and performed under the authority of such Ordinances or Acts, or any of them, and in conformity to the provisions thereof, shall remain good and valid notwithstanding the repeal of any such Ordinance or Act. 1 Geo. V. c. 42, s. 3. |
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STANDARD OF MEASURE.

- | | |
|-------------------------------|---|
| Test of the standard measure. | 4.—(1) The Secretary-Treasurer of the Association of Ontario Land Surveyors shall, by the standard of measure of length deposited with the Department and under such instructions as he from time to time receives from the Council of the Association, examine, test and stamp each standard measure of length for the surveyors who bring the same for examination; and for each measure so examined, tested and stamped may demand and receive such sum, not less than fifty cents nor more than \$2, as the Council may by by-law determine. |
|-------------------------------|---|

(2) Every admitted and practising surveyor shall procure and shall cause to be examined, corrected, tested and stamped or otherwise certified by the Secretary-Treasurer, a standard measure of length, under the penalty of the forfeiture of his license or certificate, and shall previously to proceeding on any survey, verify by such standard the length of his chains and other instruments for measuring. 1 Geo. V. c. 42, s. 4.

Duty of surveyor to procure a certified measure.

And to verify.

CHAIN-BEARERS.

5. Every chain-bearer and rod man shall, before he commences his chaining or measuring, take an oath to act as such justly and exactly according to the best of his judgment and ability and to render a true account of his chaining or measuring to the surveyor by whom he has been appointed to such duty, and that he is absolutely disinterested in the survey in question, and is not related or allied to any of the parties interested in the survey within the fourth degree, according to the computation of the civil law—that is to say, within the degree of cousin-german, which oath the surveyor employing such chain-bearer is hereby authorized and required to administer; and no person related or allied to any of the parties within such degree shall be employed as a chain-bearer or rod man on any survey. 1 Geo. V. c. 42, s. 5; 3-4 Geo. V. c. 33, s. 1.

Oath of chain-bearers.

Disqualification for relationship to parties.

PASSING OVER OTHER LANDS.

6.—(1) A surveyor when engaged in the performance of the duties of his profession may pass over, measure along and ascertain the bearings of any line or limit whatsoever, and for such purposes may pass over the lands of any person whomsoever, doing no actual damage to the property of such person.

Power when on duty to pass over private lands.

(2) Any person who interferes with or obstructs a surveyor in the exercise of the powers conferred by subsection 1 shall incur a penalty not exceeding \$100 recoverable under *The Ontario Summary Convictions Act*. 1 Geo. V. c. 42, s. 6.

Penalty for obstructing surveyor.

Rev. Stat. c. 90.

DETERMINING BOUNDARY OR OTHER LINES.

7. Where a surveyor is in doubt as to the true boundary or limit of any township, concession, range, lot or tract of land which he is employed to survey, and has reason to believe that any person is possessed of any important information touching such boundary or limit, or of any writing, plan or document, tending to establish the true position of such boundary or limit, then if such person does not willingly appear before and be examined by such surveyor, or does not willingly produce to him such writing, plan or document a Judge of a County or District Court, upon the application

Ascertaining boundary line in doubtful cases.

May
subpœna
witnesses.

of such surveyor or the person employing him accompanied by an affidavit or solemn declaration of the facts on which the application is founded, may order a subpœna to issue commanding such person to appear before the surveyor at a time and place to be mentioned in the subpœna and to bring with him any writing, plan or document mentioned or referred to therein. 1 Geo. V. c. 42, s. 7.

Service of
subpœna.

8. The subpœna shall be served on the person named therein by delivering a copy thereof to him, or by leaving the same for him with some grown-up person at his residence, exhibiting to him or to such grown-up person the original. 1 Geo. V. c. 42, s. 8.

Penalty for
disobeying.

9. If the person commanded to appear by the subpœna, after being paid his reasonable expenses or having the same tendered to him, refuses or neglects to appear before the surveyor at the time and place appointed in the subpœna, or to produce the writing, plan or document, if any, therein mentioned or referred to, or to give such evidence and information as he may possess touching the boundary or limit in question, the person so summoned shall be deemed guilty of a contempt of the Court out of which the subpœna issued, and an attachment may be issued against him by order of the Court, and he may be punished accordingly, by fine or imprisonment or both, in the discretion of the Court. 1 Geo. V. c. 42, s. 9.

Monuments
at township
corners, etc.,
and concession
lines.

10.—(1) Monuments of stone or other durable material shall be placed at the several corners, governing points or off-sets of every township heretofore or hereafter surveyed, and also at each end of the several concession lines of such townships; and lines drawn in the manner hereinafter prescribed from the monuments so erected shall be taken and considered to be the permanent boundary lines of such townships and concessions respectively.

Under direc-
tion of
Minister.

(2) Such monuments shall be so placed under the direction and order of the Minister. 1 Geo. V. c. 42, s. 10.

Confirmation
of boundaries
so ascertained.

11. The courses and lengths of such boundary lines, so ascertained and established, shall be the true courses and lengths of the boundary lines of the townships and concessions, whether the same do or do not, on actual survey, coincide with the courses and lengths mentioned and expressed in respect of such boundary lines in any letters patent, grant or other instrument. 1 Geo. V. c. 42, s. 11.

Application
of the
county
council for
placing of
monuments.

12.—(1) It shall not be necessary for the Minister to carry the provisions of the next preceding two sections into execution until an application for that purpose has been made to the Lieutenant-Governor in Council by the council of the county in which the township interested is situate,

and such council shall cause the sum requisite to defray the expenses to be incurred, or the proportion thereof payable Expenses. by the ratepayers of any township or concession, to be levied on them in the same manner as any sum required for any other local purpose authorized by law may be levied.

(2) A survey made under the next preceding two sections Confirmation of survey. may be confirmed by the Minister in the manner provided by subsection 4 of the next following section. 1 Geo. V. c. 42, s. 12.

13.—(1) Whereas in several townships some of the concession lines and side road lines, or parts of the concession lines and side road lines, were not run in the original survey performed under competent authority, and the survey of some of the concession lines and side road lines, or parts of the concession lines and side road lines, have been obliterated, and owing to the want of such lines the inhabitants of such concessions are subject to serious inconvenience, therefore the municipal council of the township in which such lines are situate may, on application of one-half the resident land- Lines in certain townships. holders in any concession or part of a concession, or upon its own motion without such application, apply to the Lieutenant-Governor in Council to cause any such line to be surveyed and to be marked by monuments of stone or other durable material under the direction and order of the Minister, in the manner prescribed in this Act, at the cost of the owners of the land in each concession or part of a concession interested. Application for survey.

(2) The concession lines, where not run or where they have been obliterated, shall be so drawn as to leave each of the adjacent concessions of a depth proportionate to that intended in the original survey. Depth of adjacent concessions.

(3) The survey of the parts of those concession lines intended to be straight, and which were not run or which have been obliterated, shall be established by drawing a straight line between the two nearest points or places where such line or lines can be clearly and satisfactorily ascertained, and for the purpose of establishing such two nearest points or places the surveyor who makes the survey may, if necessary, survey beyond the points mentioned in the council's application. How lines to be established.

(4) On the return of such survey to the Minister he shall cause a notice thereof to be published once in each week for four consecutive weeks in a newspaper published in the county or district town of the county or district in which the lands lie, and shall specify in the notice a day, not less than ten days after the last publication, on which the report of the survey will be considered, and the parties affected thereby heard, and on the hearing the Minister may either confirm the survey or direct such amendments or corrections to be made as he shall deem just, and shall confirm the survey Confirmation of survey by the Minister.

Finality.

so amended or corrected, and the lines or parts of the lines so surveyed and marked shall thereafter be the permanent boundary lines of such concession or side roads or parts of concessions or side roads to all intents and purposes, and the order of the Minister confirming the survey shall be final and conclusive upon all persons and shall not be questioned in any court.

Expenses—
How borne.

(5) The council shall cause to be laid before them an estimate of the sum requisite to defray the expenses to be incurred in order that the same may be levied on the owners in proportion to the quantity of land held by them respectively in such concession, or part of a concession, in the same manner as any sum required for any other purposes authorized by law may be levied, or the council may without a previous estimate levy on the owners in such proportions the amount of the expense when the same shall have been incurred and ascertained and the certificate of the Minister certifying the amount of such expense shall be conclusive.

Payment
out of
municipal
funds.

(6) Where an application is made by a council upon its own motion, such council, if it deems the application to be in the public interest in assisting to determine the boundaries or limits of any public road or highway or the like, may pay out of the general funds of the township either the whole of the expense or such part thereof as the council may deem proper, and in the event of the council paying part only of the expense out of the general funds the council may order that the remainder of the expense be levied on the owners in such proportion and manner. 1 Geo. V. c. 42, s. 13.

Survey of
block, etc.,
on applica-
tion of
landholders.

14.—(1) Where the municipal council of any township, city, town or village adopts a resolution, on application of one-half the resident landholders to be affected thereby, or upon its own motion, that it is desirable to place stone or other durable monuments at the front or at the rear, or at the front and rear angles of the lots in any concession or range or block or part of a concession, or range or block in their township, city, town or village, such council may apply to the Lieutenant-Governor in Council in the same manner as is provided by the next preceding section to cause a survey of such concession or range or block, or part thereof, to be made and such monuments to be placed under the authority of the Minister.

Marking
boundaries.

(2) The surveyor making such survey shall accordingly place stone or other durable monuments at the front, or at the rear, or at the front and rear angles of every lot in such concession, range or block, or part thereof, and after confirmation of the survey in the manner provided by the next preceding section the limits of each lot so ascertained and marked shall be the true limits thereof.

Finality.

(3) The cost of such survey shall be defrayed in the manner prescribed by the next preceding section. 1 Geo. V. c. 42, s. 14. Expenses.

15. All expenses incurred in making any survey, or placing any monument under the provisions of section 10 and the following sections, shall be paid by the treasurer of the municipality which made the application for the survey to the person employed in such services on the certificate and order of the Minister. 1 Geo. V. c. 42, s. 15. Defraying expenses in first instance.

16. All boundary lines of townships, cities, towns and villages, all concession lines, governing points, and all boundary lines of concessions, sections, blocks, gores and commons, and all side lines and limits of lots surveyed, and all trees marked in lieu of posts, and all posts or monuments marked, placed or planted at the front or rear angles of any lots or parcels of land, under the authority of the Executive Government of the late Province of Quebec or of Upper Canada or of Canada, or under the authority of the Executive Government of Ontario, shall be the true and unalterable boundaries of all and every such townships, cities, towns, villages, concessions, sections, blocks, gores, commons, and lots or parcels of land, respectively, whether the same upon admeasurement be found to contain the exact width or more or less than the exact width mentioned or expressed in any letters patent, grant or other instrument in respect of such township, city, town, village, concession, section, block, gore, common, lot or parcel of land. 1 Geo. V. c. 42, s. 16. Confirmation of boundaries established by proper authority.

17. Every township, city, town, village, concession, section, block, gore, common, lot or parcel of land shall embrace the whole width contained between the front posts, monuments or boundaries, planted or placed at the front angles thereof respectively so marked, placed or planted, and no more or less, any quantity or measure expressed in the original grant or patent thereof notwithstanding. 1 Geo. V. c. 42, s. 17. Frontage of surveyed territory.

18.—(1) Except as hereinafter provided every patent, grant or instrument purporting to be for any aliquot part of any concession, section, block, gore, common, lot or parcel of land in any such township, city, town or village shall be construed to be a grant of such aliquot part of the quantity the same may contain, whether such quantity be more or less than that expressed in such patent, grant or instrument. 1 Geo. V. c. 42, s. 18. As to aliquot parts of townships, etc.

(2) Where, in any survey of Crown lands made under the authority of the Minister, any lot or other subdivision bordering upon a lake or river is given an acreage covering only the land area such lot or other subdivision shall include the land area only, and not any land covered by the water of such lake or river. When lakes excluded from area of lot.

Saving as to rights determined by Courts.

(3) Subsection 2 shall not affect the rights, if any, of any person where such rights have heretofore been determined by a Court of competent jurisdiction. 3-4 Geo. V. c. 33, s. 2.

Road allowances and commons in urban municipalities.

19. In every city, town or village, or any part thereof, which has been surveyed by the authority mentioned in section 16, all allowances for any road, street, lane or common laid out in the original survey of such city, town or village, or any part thereof, shall be public highways and commons; and all posts or monuments placed or planted in the original survey of such city, town or village, or any part thereof, to designate or define any allowance for a road, street, lane, lot or common shall be the true and unalterable boundaries of every such road, street, lane, lot and common; and every surveyor employed to make a survey in such city, town or village, or any part thereof, shall follow and pursue the same rules and regulations in respect of such survey as are by law required of him when employed to make a survey in a township. 1 Geo. V. c. 42, s. 19.

Duty of Surveyor.

Unsurveyed lands granted in blocks and subsequently surveyed by grantees.

20. Where a township, tract or block of land, the whole or any part of which has not been surveyed, has been or is granted by the Crown the first survey made by the owner of any unsurveyed part thereof shall have the same force and effect as and be deemed an original survey thereof; and all allowances for roads or commons surveyed in such township, tract or block of land, and laid down on the plans of such survey thereof, shall be public highways and commons; and all lines run and marked in such survey, and all posts or monuments planted or placed in such survey to designate and define any allowance for road, concession, common or lot of land shall be the true and unalterable lines and boundaries of such allowance for road, common, or lot of land; and every surveyor employed to make a survey in such township, tract or block of land shall follow and pursue the same rules and regulations in respect of such survey as are by law required in the case of an original survey of a township, tract or block of land. 1 Geo. V. c. 42, s. 20.

Duty of surveyor.

Governing lines declared.

21. The course of the boundary line of every concession, on that side from which the lots are numbered, shall be the course of the division or side lines throughout the township, provided that such division or side lines were intended, in the original survey, to run on the same course as such boundary line. 1 Geo. V. c. 42, s. 21.

Side lines to be run on the same course as governing lines.

22. Every surveyor shall run all division or side lines which he is called upon by the owner or owners of any lands to survey on the same course as that of the boundary line of the concession in which such lands are situate, from whence the lots are numbered, provided such division or side lines were intended, in the original survey, to run on the same course as such boundary line. 1 Geo. V. c. 42, s. 22.

23. Where that end of a concession from which the lots are numbered is wholly bounded by a lake or river or other natural boundary, or where it has not been run in the original survey, or where the course of the division or side lines of the lots therein was not intended in such original survey to be on the same course as such boundary, such division or side lines shall be run on the same course as the boundary line at the other extremity of such concession if their course was intended, in the original survey, to be the same and such boundary line was run in the original survey. 1 Geo. V. c. 42, s. 23.

When concession has a natural boundary.

24. Where in the original survey, the course of the division or side lines in any concession was not intended to be the same as that of the boundary line at either end of such concession they shall be run at such angle with the course of the boundary line at that end of the concession from which the lots are numbered, as is stated in the plan and field notes of the original survey of record in the Department, if such line was run in the original survey, or with the course of the boundary line at the other extremity of the concession, if the boundary at that end of the concession from which the lots are numbered was not run in the original survey; or if neither of the boundaries of the concession was run in the original survey, or if the concession is wholly bounded at each end by a lake or river or other natural boundary, then at such angle with the course of the line in front of the concession as is stated in such plan and field notes, or if parts of the concession line have been run on different courses, as shown on such plan and field notes, then at such angle with the course of each of those parts, as is stated in the plan and field notes. 1 Geo. V. c. 42, s. 24.

When division or side line not intended to run on same course as boundaries.

25. If any division or side line between lots, or proof line intended to be on the same course as the division or side lines between lots, was drawn in any such concession, bounded as mentioned in the next succeeding section, in the original survey thereof the division or side lines between the lots therein shall be on the same course as such division or side line or proof line. 1 Geo. V. c. 42, s. 25.

Where division or proof line has been run between lots.

26. Where two or more such division or side lines or proof lines were drawn in the original survey of such concession, so bounded, that division or side line or proof line which is nearest to the boundary of the concession from which the lots are numbered shall govern the course of the division or side lines of all the lots in such concession between the boundary of the concession from which the lots are numbered and the next division or side line or proof line drawn in the original survey; and such last mentioned line or proof line shall govern the course of the division or side lines of all the lots up to the next division or side line or

When more than one such line drawn in original survey.

proof line drawn in the original survey, or to the boundary of the concession towards which the lots are numbered, as the case may be. 1 Geo. V. c. 42, s. 26.

How lines to be governed in townships laid out in sections or blocks.

Broken boundaries.

Lots in certain localities.

Saving.

27.—(1) Except as provided in subsection 2 in all those townships which in the original survey were divided into sections, agreeably to an Order in Council bearing date the 27th day of March, 1829, or which have since been or shall be divided into sections or blocks of one thousand eight hundred acres or thereabouts, or of one thousand acres or thereabouts, or of six hundred and forty acres or thereabouts, under instructions from the Minister, the division or side lines in all concessions, in any section or block, shall be governed by the boundary lines of such section or block in like manner as the division or side lines in townships originally surveyed before that day are governed by the boundary lines of the concession in which the lots are situate: Provided that in those sections or blocks, the governing boundaries of which are broken by lakes or rivers in such a way that the course thereof cannot accurately be determined, a surveyor, when called upon to run any side line in any concession in such section or block, shall run such side line on the astronomical course of the side lines of the lots in the township, as shown on the original plan and field notes thereof of record in the Department.

(2) The lines between all lots in all townships in the Districts of Muskoka and Parry Sound; all townships in the District of Nipissing which lie south of the Mattawan River and Trout Lake and the Township of Mattawan in that district; all townships in the Provisional County of Haliburton; the Townships of Dalton, Digby, and Longford in the County of Victoria; the Townships of Galway, Cavendish, Anstruther and Chandos in the County of Peterborough; the Townships of Tudor, Grimsthorp, Wollaston, Limerick, Cashel, Faraday, Dungannon, Mayo, Herschell, Monteagle, Carlow, McClure, Wicklow and Bangor in the County of Hastings; the Townships of Anglesea, Effingham, Abinger and Denbigh in the County of Lennox and Addington; the Townships of Barrie, South Canonto and North Canonto in the County of Frontenac, and the Townships of Brougham, Grattan, Wilberforce, Alice, Mattawachan, Griffith, Sebastopol, South Algona, North Algona, Fraser, Richards, Hagarty, Brudenell, Lyndoch, Raglan, Radcliffe, Sherwood, Burns and Jones in the County of Renfrew, shall be run on the astronomical course stated in the plan and field notes of the original survey of record in the Department; but nothing in this subsection shall affect the lines in any concession in any section or block in any of such townships in which any line was run before the 1st day of July, 1897. 1 Geo. V. c. 42, s. 27; 3-4 Geo. V. c. 33, s. 3.

28. Every surveyor shall on the 31st day of December in each year make to the clerk of the township a return, Form 1, of all lines run by him in such township under the provisions of subsection 2 of section 27. 1 Geo. V. c. 42, s. 28.

Surveyor's return to township clerk.

29.—(1) Where the concession line in front of two adjacent sections or blocks heretofore or hereafter laid out under authority of an Order in Council is shown on the plan and field notes to be on the same astronomical course, and the boundaries between the sections or blocks are shown on the plan and field notes to be on the same astronomical course, the surveyor, when called upon to re-establish the angle of either section or block, shall connect the two nearest undisputed points on the concession line in front of such sections or blocks by a straight line and join the nearest undisputed points on the side line between the sections or blocks, and the intersection of these two lines shall be the angle of the adjacent sections or blocks; Provided that the undisputed points to be connected are not more than 20 chains apart, and that one of them is on either side of the line.

How surveyor is to re-establish the angle of adjacent sections or blocks.

(2) If such undisputed points on the side line are more than twenty chains apart the surveyor shall then establish the angle of the sections or blocks by dividing proportionately, as intended in the original survey, the distance between the two nearest undisputed angles of lots on the concession line in front of such sections or blocks, and the point so ascertained shall be the angle of the sections or blocks.

Where undisputed points more than 20 chains apart.

(3) Where the concession line in front of the two adjacent sections or blocks is not on the same astronomical course as shown on the plan and field notes, and has become obliterated, the angle of the section shall be established by dividing proportionately, as intended in the original survey, the distance between the front and rear angles of the lots on the side lines of the adjacent sections or blocks, and the point so ascertained shall be the angle of the adjacent sections or blocks.

Where front line obliterated.

(4) If the angle of the section or block cannot be ascertained in the mode provided for by the three next preceding subsections the surveyor shall report the circumstances of the case to the Minister who shall determine how the surveyor shall proceed, and the angle ascertained in accordance with the directions of the Minister shall be the true angle of the sections or blocks. 1 Geo. V. c. 42, s. 29.

Report to Minister when angle cannot be ascertained.

30.—(1) Except as in this section is provided the surveys made, under instructions from the Department of the Interior of Canada, of certain townships in the Rainy River District the lots immediately upon the bank of Rainy River having a width of ten chains fronting the river and a varying depth, and the remaining lands so surveyed being sub-

Former surveys in the Rainy River District adopted.

divided into sections of one mile square, and quarter sections of one hundred and sixty acres, with road allowances around each section are hereby adopted and legalized.

Width of road allowances in Rainy River.

(2) The road allowances in the townships in the District of Rainy River shall be and are hereby declared to be one chain in width, such chain allowance to be that lying immediately north and east respectively of the lines of survey run upon the ground in the original survey.

Lands detached to form part of adjoining quarter-sections or lots.

(3) The strips of land formerly forming part of the road allowances shall be detached therefrom and attached to and form part of the quarter sections or lots, as the case may be, immediately adjoining the strips of land on the east and north thereof.

Present quarter-section posts or lot posts to remain.

(4) The quarter section posts or lot posts intended to define on the ground the limits of the quarter sections or lots in such townships shall continue to be the governing points notwithstanding the addition hereby made to the respective quarter sections or lots. 1 Geo. V. c. 42, s. 30.

Governing line in sections or blocks of 2,400, 1,800, 1,000 or 640 acres.

31.—(1) In a section or block of 1,800 acres or thereabouts the governing line of the side lines shall also be the governing line between the aliquot parts of the lots where they are divided north and south if not otherwise intended in the original survey.

Division lines between the respective halves.

(2) The division line between the north and south halves of any unbroken lot in such section or block shall be a line joining the midway points between the front and rear angles of the lot, and the division line between the east and west halves of such lot shall be a line drawn on the same astronomical course as the side lines in such section or block from a point on the front of such line midway between the front angles thereof.

Application of section.

(3) The provisions of this section shall apply to a section or block of 2,400 acres, 1,000 acres or 640 acres or thereabouts, and in dividing the lots into quarters, or other aliquot parts, the same method shall be adopted. 1 Geo. V. c. 42, s. 31.

Proceedings where monuments or posts cannot be found in certain townships.

32. Where a surveyor is employed to run any boundary line of, or any dividing line or limit between any sections, quarter-sections, or other aliquot parts of any section in any township in the Rainy River District subdivided into sections, in accordance with the Dominion Lands system of survey, or in any of the following townships and parts of townships in the Districts of Algoma, Sudbury, Manitoulin and Thunder Bay, namely, Rutherford, Salter, Victoria, all that portion of Shedden south of the fourth concession, the Townships of Spragge, Esten, Thompson, all that portion of Patton south of the third concession, the Townships of Thes-

salon River, Lefroy, Rose, Laird, Meredith, Macdonald, Tarentorus, Aweres, Vankoughnet, Awenge, Korah, Pennefather, Fenwick, sections 31 to 36, both inclusive, of the Township of Haviland, the Townships of Tilley, Parke, Prince, Dennis, Kars, Fisher, Palmer, Herrick, Ryan, Blake, Crooks, Pardee, McIntyre, Macgregor, McTavish, Homer, and Byron, and the post or monument planted, erected or marked in the original survey to define the corner of any such section, quarter-section or other aliquot part cannot be found, the surveyor shall obtain the best evidence that the nature of the case admits of respecting such post or monument; but, if the position of the same cannot be satisfactorily so ascertained, he shall proceed as follows:

- (a) If the lost post or monument is that of a township corner he shall report the circumstances to the Minister who shall instruct him how to proceed;
- (b) If the lost post or monument is that of a section or quarter-section corner on the boundary line of a township he shall renew the same by joining the nearest original blazes, quarter-section or section corners on such boundary by a straight line, and shall give to each section or quarter-section a breadth proportionate to that shown on the original plan and field notes thereof, of record in the Department, having first taken into account and made due allowance for any roads shown on the plan and field notes;
- (c) If the lost post or monument is that of a section corner in the interior of a township he shall renew the same by intersecting the straight lines adjoining the nearest original blazes, or original quarter-section or section corners, on the adjoining intersecting section boundaries; and where the nearest section corner on any side of the lost post or monument is on a township boundary, and that post or monument, and also the intervening quarter-section posts or monuments are lost, and there are no original blazes between such corners, the surveyor shall first renew the posts or monuments on the section corner or corners on such township boundary in accordance with the provisions of the next preceding clause;
- (d) If the lost post or monument is that of a quarter-section corner in the interior of a township he shall renew the same by joining the nearest original blazes or adjacent section corners, determined, if necessary, as hereinbefore provided, and shall give to each of the adjacent quarter-

sections a breadth proportionate to that shown on the original plan and field notes;

(e) In laying out interior boundaries of half-sections or of quarter-sections he shall connect the opposite quarter-section corners, determined, if necessary, as hereinbefore provided by straight lines;

(f) In laying out interior boundaries of other aliquot parts of any section he shall give to each aliquot part its proportionate share of breadth and interior depth and connect the resulting terminal points by straight lines. 1 Geo. V. c. 42, s. 32.

Settling the front of a concession where only a single row of posts planted.

Side lines in such cases.

Boundary of end of lot.

In township fronting on a natural boundary how division lines to be drawn if no posts planted to mark the width of lots.

Side lines where part of concession line broken.

33. The front of each concession in any township, where only a single row of posts has been planted on the concession lines and the lands have been described in whole lots shall be that end or boundary of the concession which is nearest to the boundary of the township from which the concessions thereof are numbered; and where the line in front of any such concession was not run in the original survey the division or side lines of the lots in such concession shall be run from the original posts or monuments placed or planted on the front line of the concession in the rear thereof, on the same course as the governing line determined in the prescribed manner, to the depth of the concession—that is, to the centre of the space contained between the lines in front of the adjacent concessions, if the concessions were intended in the original survey to be of an equal depth, or, if they were not so intended, then to the proportionate depth intended in the original survey, as shown on the plan and field notes thereof of record in the Department, having due regard to any allowance for a road made in the original survey; and a straight line joining the extremities of the division or side lines of any lot in such concession so drawn shall be the true boundary of that end of the lot which was not run in the original survey. 1 Geo. V. c. 42, s. 33.

34.—(1) In those townships in which any concession is wholly bounded in front by a river or lake or other natural boundary, where no posts or other boundary marks were planted or made in the original survey on the bank of such river or lake or natural boundary to regulate the width in front of the lots in the broken front concessions the division or side lines of the lots in such broken front concessions shall be drawn from the posts or other boundary marks on the concession line in rear thereof, on the same course as the governing line, determined in the prescribed manner, to the river, lake or natural boundary in front.

(2) Where any concession is bounded in front at either end, in part though not wholly, by a river, lake or other natural boundary, and no posts or other boundary marks

were planted or made in the original survey on the bank of such river, lake or natural boundary to regulate the widths of the lots broken thereby, the division or side lines of such broken lots shall be drawn from points on the rear of the concession, determined by measuring off the widths proportionately as intended in the original survey, from the intersection of the division or side line of the last whole lot of the original survey with the rear line of the concession, on the same course as the governing line so determined, to the river, lake or natural boundary in front. 1 Geo. V. c. 42, s. 34.

35. In those townships in which the concessions have been surveyed with double fronts—that is, with posts or monuments placed or planted on both sides of the allowances for roads between the concessions, and the lands have been described in half lots, the division or side lines shall be drawn from the posts or monuments at both ends to the centre of the concession, and each end of such concession shall be the front of its respective half of such concession, and a straight line joining the extremities of the division or side lines of any half lot in such concession, so drawn, shall be the true boundary of that end of the half lot which has not been bounded in the original survey. 1 Geo. V. c. 42, s. 35.

Concessions
with double
fronts.

36. Where a double front concession is not of the full depth the division or side lines shall be drawn from the posts or monuments at both ends thereof to the centre of the concession, as provided in the next preceding section, without reference to the manner in which the lots or parts of lots in such concession were described for patent. 1 Geo. V. c. 42, s. 36.

Division or
side lines in
double front
concessions
not of
full depth.

(As to roads connecting side lines in double front concessions, see s. 477 of The Municipal Act, R.S.O. c. 192.)

37. In those townships in which each alternate concession line only has been run in the original survey, but with double fronts, the division or side lines shall be drawn from the posts or monuments on each side of such alternate concession lines to the depth of a concession—that is, to the centre of the space contained between such alternate concession lines, if the concessions were intended in the original survey to be of an equal depth, or if they were not so intended, then to the proportionate depth intended in the original survey, as shown on the plan and field notes thereof of record in the Department; and each alternate concession line shall be the front of each of the two concessions abutting thereon. 1 Geo. V. c. 42, s. 37.

Side lines in
concessions
where alter-
nate conces-
sion lines
only have
been run;
and depth of
each conces-
sion.

38. Where a Crown patent, grant, or other instrument has been issued for several lots or parcels of land in concessions adjoining each other the side lines or limits of the lots or parcels of land therein mentioned shall commence at the grant.

As to lands
in adjoining
concessions
included in
the same
grant.

front angles of such lots or parcels of land respectively and shall be run as hereinbefore provided, and shall not continue on in a straight line through several concessions—that is to say, each lot or parcel of land shall be surveyed and bounded according to the provisions of this Act independently of the other lots or parcels mentioned in the same patent, grant or instrument. 1 Geo. V. c. 42, s. 38.

METHOD OF RUNNING LINES.

How division
lines to be
run.

39. Every surveyor employed to run any division line between lots, or any line required to run on the same astronomical course as any division line or side line in the concession in which the land to be surveyed lies, shall run such division line or side line on the same astronomical course, which he shall determine by astronomical observation or by other satisfactory method, as the straight line joining the front and rear ends of the governing boundary line of the concession or section, if so intended in the original survey, or at such angle therewith as is stated in the plan and field notes, and the same shall be deemed to be the true course of such governing or boundary line for all the purposes of this Act, although such governing or boundary line as marked on the ground is curved or otherwise deviates from a straight course, and if a line is to be run at any angle with a front line or other line which is not straight the ends of such front or other line shall be joined as above provided. 1 Geo. V. c. 42, s. 39.

How lines
run where the
original post
or monument
cannot be
found.

40.—(1) Where a surveyor is employed to run any side line or line between lots, and the original post or monument from which such line should commence cannot be found, he shall obtain the best evidence that the nature of the case admits of respecting such side line, post, monument or line between lots; but if the same cannot be satisfactorily ascertained then the surveyor shall measure the true distance between the nearest undisputed posts, limits or monuments and divide such distance into such number of lots as the same contained in the original survey, assigning to each a breadth proportionate to that intended in the original survey, as shown in the plan and field notes thereof of record in the Department; and if any part of the line in front of the concession in which such lots are situate, or boundary of the township in which such concession is situate, has been obliterated or lost then the surveyor shall run a line between the two nearest points or places where such line can be clearly and satisfactorily ascertained, in the manner provided in this Act, and shall plant all such intermediate posts or monuments as he may be required to plant in the lines so ascertained, having due regard to any allowance for a road or commons set out in the original survey, and the limits of each lot so found shall be the true limits thereof.

(2) In double front or alternate concessions, where an original post or monument cannot be found, any original post or monument still standing, or the position of which is satisfactorily established on the opposite side of the concession road allowance or on the centre line thereof, shall constitute the best evidence within the meaning of subsection 1 for the purpose of establishing the position of such missing post or monument. 1 Geo. V. c. 42, s. 40.

Evidence for establishing location of missing monument.

41. In a township in which the side lines of the lots were drawn in the original survey a surveyor, when called upon to determine any disputed boundary, shall ascertain and establish the division or side lines of the lots by running them as they were run in the original survey, whether the same were in the original survey run from the front of the concession to the rear or from the rear of the concession to the front, and shall adhere to all posts, limits or monuments planted or marked on the division or side lines in the original survey as being or designating corners of lots under such original survey. 1 Geo. V. c. 42, s. 41.

Side lines in original survey to be adhered to.

42. A blind concession line, or a line not run in the original survey, shall be established by dividing proportionately, as intended in the original survey, the distance between the front angles of the respective lots in such concessions, and lines joining the points so ascertained shall be the boundary between the concessions. 1 Geo. V. c. 42, s. 42.

Blind concession lines or lines not run in original survey.

43. Where the front of a concession is wholly or in part broken by a lake, river or other natural boundary the rear boundary of the adjacent concession or part of the concession shall be established by giving to such adjacent concession or part of concession the depth shown on the original plan and field notes. 1 Geo. V. c. 42, s. 43.

Broken front concessions.

ROAD ALLOWANCES.

44.—(1) Subject to the provisions of *The Registry Act*, as to the amendment or alteration of plans, all allowances for roads, streets or commons surveyed in a city, town, village or township, or any part thereof, which have been or may be surveyed and laid out by companies or individuals and laid down on the plans thereof, and upon which lots fronting on or adjoining such allowances for roads, streets, or commons have been or may be hereafter sold to purchasers, shall be public highways, streets and commons.

Allowances for roads laid out by private owners.

Rev. Stat. c. 124.

(2) All lines which have been or may be run, and the courses thereof given in the survey of such city, town, village or township, or part thereof, and laid down on the plans thereof, and all posts or monuments which have been or may be placed or planted in the first survey of such city, town, village or township, or part thereof, to designate or define any allowances for roads, streets, lots or commons, shall be the true and unalterable lines and boundaries thereof respectively.

Confirmation of boundaries as settled in first survey.

Methods of original survey to be followed.

(3) A surveyor employed in establishing or re-establishing the boundaries of any road, street, common or lot shown on such plan, or on any registered plan in such city, town, village or township, or part thereof, shall follow the method adopted in making the original survey of the same, as shown by such plan, and shall give to each lot the exact or proportionate dimensions as shown thereon.

Allowances for roads and commons.

(4) No such lot shall be so laid out as to interfere with, obstruct, shut up, or be composed of any part of any allowance for road or common which was surveyed and reserved in the original survey.

Validity of private survey.

(5) No such survey shall be valid unless performed by a surveyor. 1 Geo. V. c. 42, s. 44 (1-5).

Ownership of part of street closed.

(6) Where a street which has been laid down upon the plan but has not been established by by-law of the municipal corporation, or otherwise assumed by it for public use, is closed in whole or in part by an alteration of the plan under *The Registry Act, The Land Titles Act* or other provision in that behalf, the part so closed shall belong to the owners of the land included in the plan and abutting thereon.

Rev. Stat. c. c 124, 126.

How owners of abutting lands to take.

(7) Where several parcels of land included in the plan having different owners, abut on the street, or part thereof, so closed, the owner of each parcel shall be entitled to that part of the street so closed on which his land abuts to the middle line of the street, and where there are several owners of an abutting parcel each shall be entitled to the like estate or interest in such part as he has in the parcel of land abutting thereon.

Where allowance abuts on one side of stream, etc.

(8) Where any part of the street so closed is abutted on one side by another road or street, or by a stream, river or other body of water over which the public have rights of navigation or of floating logs, the whole width of such part shall belong to the owners whose lands abut thereon opposite such street, stream, river or water.

Division line between adjoining parcels.

(9) The division line between two adjoining parcels produced to the middle line of the closed street or across such street, in cases coming within subsection 8, shall be the division line between the parts of the closed street to which the owners of such parcels are respectively entitled.

Where incumbrancers to be deemed owners.

(10) Where there is an encumbrance on a parcel of land abutting on the street, or part thereof, closed it shall extend to and include the part thereof to which the owner of such parcel becomes entitled under this section.

Street, definition of.

(11) The word "street," in subsections 6 to 10, shall include a lane, an alley and an allowance for road. 2 Geo. V. c. 17, s. 32.

(As to repairs of roads, etc., see s. 460 (6) of *The Municipal Act, R.S.O. c. 192.*)

JOURNALS AND FIELD NOTES.

45. Every surveyor shall keep exact and regular journals and field notes of all his surveys, and shall file them in the order of time in which the surveys have been performed, and shall give copies thereof to any person concerned, when so required, on payment of \$1 for each copy, if the number of words therein does not exceed four hundred words, and ten cents for every additional hundred words. 1 Geo. V. c. 42, s. 45.

Surveyor's
journals and
field-notes.

EVIDENCE.

46.—(1) For better ascertaining the original limits of any township, concession, range, lot or tract of land, every surveyor shall administer an oath to any person whom he examines concerning any boundary, post or monument, or any original landmark, line, limit or angle of any township, concession, range, lot or tract of land which such surveyor is employed to survey.

Administra-
tion of
oaths by
surveyor.

(2) The evidence taken by the surveyor shall be reduced to writing and shall be read over to and be signed by the person giving the same, or, if he cannot write, such person shall acknowledge it as correct before two witnesses who, as well as the surveyor, shall sign the same.

Evidence—
How to be
taken down.

(3) The evidence shall, and any document or plan prepared and sworn to by a surveyor as correct with reference to any survey by him performed may be filed and kept in the registry office of the registry division or in the land registry of the county or district in which the land to which the same relates is situate, subject to be produced thereafter in evidence in any Court.

Filing
evidence,
documents,
etc., in reg-
istry office.

(4) The fee for receiving and filing the same shall be twenty-five cents, and the expense of filing shall be borne by the parties in the same manner as the other expenses of the survey. 1 Geo. V. c. 42, s. 46.

Fees.

(Sections 531 and 532 of *The Criminal Code* are as follows:

531. Every one is guilty of an indictable offence and liable to seven years imprisonment who wilfully pulls down, defaces, alters or removes any mound, land mark, post or monument lawfully erected, planted or placed to mark or determine the boundaries of any province, county, city, town, township, parish or other municipal division.

532. Every one is guilty of an indictable offence and liable to five years imprisonment, who willfully defaces, alters or removes any mound, land mark, post or monument lawfully placed by any land surveyor to mark any limit, boundary or angle of any concession, range, lot or parcel of land.

2. It is not an offence for any land surveyor in his operations to take up such posts or other boundary marks when necessary, if he carefully replaces them as they were before.

FORM 1.

(Section 28.)

SURVEYOR'S RETURN.

Township of.....

County of.....

I hereby certify that the following lot lines in the above township were run by me during the year ending December 31st, 19 , under the provisions of *The Surveys Act*.

Line between.	Concession.	Date.
Lot and Lot Etc., etc.		

Dated at , this day of , 19 .
A. B.,

Ontario Land Surveyor.

1 Geo. V. c. 42, Form 1.

8. MISCELLANEOUS.

CHAPTER 167.

An Act respecting the Profession of Architects.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Ontario Architects' Act*. Short title.
1 Geo. V. c. 43, s. 1.

2. The Ontario Association of Architects, hereinafter called Association continued. the Association, is hereby continued. 1 Geo. V. c. 43, s. 2.

3. The Association may purchase, take and possess for the Powers as to real-estate. purposes of the Association, but for no other purpose, and after acquiring the same may sell, mortgage, lease or dispose of any real estate. 1 Geo. V. c. 43, s. 3.

4. The persons who are now members of the Association Membership. and all persons who shall be hereafter registered as architects under this Act shall be members thereof, subject to the by-laws of the Association and to the provisions of this Act. 1 Geo. V. c. 43, s. 4.

5. There shall be a Council of Management of the Association, hereinafter called the Council, to be appointed in Council of Management. the manner provided by this Act. 1 Geo. V. c. 43, s. 5.

6.—(1) The Council shall be composed of nine persons, who shall be British subjects, and have resided and practised Council, how composed. the profession of architecture within Ontario for at least ten years.

(2) Any five members of the Council shall form a quorum. Quorum.
1 Geo. V. c. 43, s. 6.

7. The members of the Council shall be elected by ballot, Election. in such manner as may be provided by the by-laws of the Association, at its annual meeting, or at a special meeting called for that purpose, and the members of the Association obtaining the greatest number of votes shall be declared elected. 1 Geo. V. c. 43, s. 7.

Qualification.

8. No person shall be eligible for election to the Council, or qualified to fill any vacancy therein, or to vote for any member thereof unless duly qualified under the provisions of this Act and the by-laws of the Association. 1 Geo. V. c. 43, s. 8.

Term of office.

9. Except in the case of an election or an appointment to fill a vacancy caused by death or resignation the members of the Council shall hold office for the term of three years, three retiring each year. 1 Geo. V. c. 43, s. 9.

Vacancies, how filled.

10.—(1) In case of the resignation or death of any member or members of the Council, not exceeding four, the other members may fill the vacancies, to hold office until the time of the holding of the next annual meeting, provided that such meeting is not to be held within three months of the occurring of such vacancies.

Special meeting.

(2) In case of the resignation or death of five or more members of the Council, the President or the Vice-President of the Association or, in case of their default for a period of ten days, any five members in good standing may call a special meeting of the Association, upon a notice of not less than ten days, for the purpose of filling the vacancies.

Election, how determined.

(3) In case of an election to fill the vacancies referred to in subsections 1 and 2, the member receiving the greater number of votes shall be considered the member elected to fill the vacancy which will require the longer term to expire, and so on until the vacancies are filled. 1 Geo. V. c. 43, s. 10.

Proceedings where election disputed.

11. In case of any doubt or dispute as to who has been elected a member of the Council, or as to the legality of the election of any member, the other duly elected members shall be a committee to hold an enquiry and decide who is the legally elected member, and the person whom they decide to have been elected shall be deemed to be legally elected, and if the election is found to have been illegal, the committee shall order a new election. 1 Geo. V. c. 43, s. 11.

President and officers.

12. The Council shall annually elect from amongst its members a President and two Vice-Presidents, and shall appoint a Registrar, a Treasurer, a Solicitor, an Auditor and such other officers as may be deemed necessary for carrying out the objects of this Act, who shall hold office during the pleasure of the Council, and who shall, as well as being officers of the Council, hold the like positions as officers of the Association. 1 Geo. V. c. 43, s. 12.

Power to regulate meetings of Council and Association.

13. Meetings of the Association and of the Council shall be held at such times and places as may be fixed by the by-laws of the Association or Council respectively; and in the absence of any rule or regulation as to the summoning of meetings of the Association, or of the Council, the President,

or, in the event of his absence or death, the Registrar may summon the same for such time and place as he may think fit, by notice to be mailed to each member. 1 Geo. V., c. 43, s. 13.

14. In the event of the absence of the President from any meeting, either of the Vice-Presidents, or, in their absence, some other member to be chosen from among the members present shall act as President. 1 Geo. V. c. 43, s. 14. Who to preside at meetings.

15. All questions submitted to the Association or to the Council shall be decided by a majority of the members present, not being less than five in number in the case of the Council, and twenty in the case of the Association. 1 Geo. V. c. 43, s. 15. Quorum and majority.

16. At all meetings the President for the time being shall have only a casting vote, and in the case of a tie at an election he shall have a casting vote in addition to his vote as a member of the Association. 1 Geo. V. c. 43, s. 16. Casting vote.

17. There shall be paid to the members of the Council such fees for attendance, and such reasonable travelling expenses, as may be fixed by by-law of the Association passed at an annual meeting. 1 Geo. V. c. 43, s. 17. Payment of expenses of members of Council.

18. The Council may by by-law fix the salaries or fees to be paid to the officers of the Association and to the Board of Examiners hereinafter provided for. 1 Geo. V. c. 43, s. 18. Salaries.

19. The Council may:—

- (a) appoint an examiner, or examiners, for the purpose of ascertaining and reporting upon the qualification of all persons who apply for admission and registration as students at any matriculation, preliminary, intermediate or final examination; Powers of Council. Examiners.
- (b) make all necessary rules, regulations and by-laws respecting the admission and registration of students, the periods and conditions of study, and the registration of architects as members of the Association and all matters relating to the discipline and honour of the profession; Admission of students, etc.
- (c) regulate and fix the admission and annual fees payable by students and architects, and make all rules, regulations and by-laws necessary for the proper carrying out of the provisions of this Act; Fees. By-laws.
- (d) enact by-laws as to the terms upon which it will accept the matriculation or other certificates of colleges and other institutions not in Ontario. Diplomas of foreign institutions.

1 Geo. V. c. 43, s. 19.

Matriculants
in arts not
required to
pass pre-
liminary
examination.

20. Any student who has matriculated in Arts in any University in His Majesty's Dominions, or in the Faculty of Applied Science and Engineering of the University of Toronto shall not be required to pass the preliminary examination. 1 Geo. V. c. 43, s. 20.

Admission
to practise.

21. Any person who applies for registration as an architect shall not be less than twenty-one years of age, and shall have served as a student not less than five years with a principal entitled to register under this Act, or with any other principal approved by the Council, and shall have passed the prescribed qualifying examinations. 1 Geo. V. c. 43, s. 21.

Admission
of students.

22.—(1) All students desirous of entering the profession of architecture shall be presented by a member of the Council, and shall cause their full names to be entered with the Registrar, and shall pay such fees and submit to such examinations as shall be prescribed.

Graduates
of Faculty
of Applied
Science and
Engineering.

(2) A graduate of the Faculty of Applied Science and Engineering of the University of Toronto shall be required to serve only three years as a student, one of which three years may be served during the vacations of such Faculty.

Term of
service as
students.

(3) Students shall hereafter serve such term as is required to be served by the provisions of this Act, under indenture, to a registered architect, which indenture and any assignment thereof, with affidavit of execution thereto attached, shall be filed with the Registrar upon payment of such fee as the Council may by regulation direct. 1 Geo. V. c. 43, s. 22.

General
Register.

23. The Registrar shall keep a register to be called "The General Register," Form 1, of all persons entitled to be registered under this Act, and shall enter opposite the names of all registered persons who have died a statement of that fact, and shall make all necessary alterations in the addresses of persons registered and, subject to the provisions of this Act, shall keep the register in accordance with the by-laws and regulations of the Council. 1 Geo. V. c. 43, s. 23.

Restriction
of right
to use title.

24.—(1) No person shall be entitled to take or use the name or title of "Registered Architect," either alone or in combination with any other word or words, or any name, title or description, implying that he is registered under this Act, unless he is so registered.

Penalty.

(2) Any person who, not being registered under this Act, takes or uses any such name, title or description shall incur a penalty not exceeding \$25 for the first offence and not exceeding \$100 for each subsequent offence. 1 Geo. V. c. 43, s. 24.

25. If the Registrar wilfully makes or causes to be made any falsification in any matter relating to the register he shall, on conviction thereof, be liable to be imprisoned for a term not exceeding twelve months. 1 Geo. V. c. 43, s. 25. Penalty for registrar falsifying register.

26. Any person who wilfully procures, or attempts to procure, registration under this Act by making or producing, or causing to be produced or made, any false or fraudulent representation or declaration, either verbally or in writing, that he is entitled to such registration shall, on conviction thereof, be liable to be imprisoned for any term not exceeding twelve months. 1 Geo. V. c. 43, s. 26. Penalty for procuring false registration.

27.—(1) The Registrar shall, in every year, under the direction of the Council, cause to be printed, published and kept for inspection at his office, free of charge, a register, Form 2, to be called "The Architects' Register," of the names, in alphabetical order according to the surnames, with the respective residences of all persons appearing on the general register on the next preceding first day of January. Register of practitioners.

(2) A copy of such register, purporting to be so printed and published, shall be evidence in all courts and before all justices of the peace and others that the persons therein mentioned are registered according to the provisions of this Act. Evidence of registration.

(3) In the case of any person whose name does not appear in such copy a certified copy under the hand of the Registrar of the entry of the name of such person in the general register shall be evidence that such person is registered under the provisions of this Act. 1 Geo. V. c. 43, s. 27. Certified copy of entry.

28. Every architect summoned to attend any civil or criminal court for the purpose of giving evidence in his professional capacity, for each day he so attends shall be entitled to \$5, in addition to his travelling expenses, to be taxed and paid in the manner by law provided with regard to the payment of witnesses attending such court. 1 Geo. V. c. 43, s. 28. Witness fees of architects.

29. Every architect who wilfully makes any false certificate in respect of any work done, or the value or condition of any work or building, besides being liable in damages for any injury thereby suffered, shall incur a penalty not exceeding \$100. 1 Geo. V. c. 43, s. 29. Penalty in case architect makes a false certificate.

30.—(1) All fees payable under this Act may be recovered as ordinary debts due to the Association; and all penalties imposed by or under the authority of this Act shall be recoverable under *The Ontario Summary Convictions Act*. Recovery of fees and penalties. Rev. Stat. c. 90.

(2) All penalties recovered under this Act shall immediately upon the recovery thereof be paid by the convicting magistrate to the Registrar. Application of penalties.

Who may be complainant.

(3) Any person may be prosecutor or complainant under this Act, and the Council may allot such portion of the penalties as it deems expedient to the prosecutor. 1 Geo. V. c. 43, s. 30.

Service of notices.

31.—(1) Except as herein otherwise provided, all notices and documents required by or for the purposes of this Act to be sent may be sent by registered post, and shall be deemed to have been received at the time when the same would be delivered in the ordinary course of the mail.

What to be deemed proper address.

(2) Such notices and documents when sent to a person registered under this Act shall be deemed to be properly addressed if addressed to him according to his address registered in the general register. 1 Geo. V. c. 43, s. 31.

Application of funds.

32.—(1) All money arising from fees payable on registration of the annual renewal fees or from the sale of copies of the register, or otherwise, shall be paid to the Registrar and shall be applied in accordance with such regulations as may be made by the Council for defraying the expenses of the Association.

Investments.

(2) The Council may invest in the name of the Association any money not so expended in such securities as trustees may properly invest in, and any income derived from such invested sums shall form part of the ordinary income of the Association. 1 Geo. V. c. 43, s. 32.

Accounts of Association.

33. The Registrar and Treasurer shall enter in books to be kept for that purpose a true account of all sums of money by them respectively received and paid under this Act, and such account shall be audited by the auditor and submitted to the Council and to the Association when and so often as they may require. 1 Geo. V. c. 43, s. 33.

FORM 1.

(Section 23.)

THE GENERAL REGISTER.

Name.	Date of Regis- tration.	Address.	Remarks.

1 Geo. V. c. 43, Form 1.

FORM 2

(Section 27.)

THE ARCHITECTS' REGISTER.

1st January, 19 .

Name.	Date of Regis- tration.	Title or Distinction (if any).	Residence.

1 Geo. V. c. 43, Form 2.

CHAPTER 168.

An Act respecting the Chartered Stenographic Reporters' Association of Ontario.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title. **1.** This Act may be cited as *The Stenographic Reporters' Act*. 1 Geo. V. c. 44, s. 1.
- Interpretation. **2.** In this Act,
 "The Association," "The Association" shall mean The Chartered Stenographic Reporters' Association of Ontario. 1 Geo. V. c. 44, s. 2.
- Association continued. **3.** The Association is hereby continued. 1 Geo. V. c. 44, s. 3.
- Powers as to land. **4.** The Association may purchase, take and possess for the purposes of the Association, but for no other purpose, and after acquiring the same may sell, mortgage, lease or dispose of any real estate the annual value of which shall not at any time exceed \$5,000. 1 Geo. V. c. 44, s. 4.
- Membership. **5.** Subject to the provisions of this Act and to the by-laws of the Association the Association shall consist of its present members and all persons who shall cause their names to be registered under the provisions of this Act. 1 Geo. V. c. 44, s. 5.
- Educational powers. **6.—(1)** The Association shall have power to promote and increase by all lawful ways and means the knowledge, skill and proficiency of its members in all things relating to the business or calling of a stenographer, and to that end to establish classes, lectures and examinations and prescribe such tests of competence, fitness and moral character as may be thought expedient to qualify for admission to membership, to grant diplomas and certificates of efficiency, and to authorize its members to use the distinguishing title "Chartered Stenographic Reporter" or the letters "C.S.R."
- Examination of students and affiliation. **(2)** The Association may also prescribe for students of stenography, who desire to become members of the Association, such examinations and may grant to them such certi-

ificates of competency as it sees fit, and may organize the students into a society in affiliation with itself for study and mutual improvement. 1 Geo. V. c. 44, s. 6.

7.—(1) The Association, in general or special meeting assembled after due notice, may pass by-laws for carrying out its objects. ^{Power to make by-laws.}

(2) Unless otherwise provided by the by-laws no new by-law shall be passed, nor shall any by-law be altered or repealed, except by a two-thirds vote of the members present at a meeting of the Association, and only after at least two weeks' notice in writing of the proposed alteration or repeal shall have been given or mailed to each member. 1 Geo. V. c. 44, s. 7. ^{Pre-requisites for validity of by-laws.}

8.—(1) The affairs, business and concerns of the Association shall be managed by a Council composed of nine persons who shall be British subjects, who have resided and practised the profession of stenography within Ontario for at least five years. ^{Council.}

(2) The members of the Council shall be elected by voting papers in the manner provided for by the by-laws, at the annual meeting, or at a special meeting called for that purpose, and the members obtaining the greatest number of votes shall be declared elected. ^{Election by voting papers.}

(3) No person shall be eligible for election to the Council or qualified to fill any vacancy therein or to vote for any member thereof unless duly qualified under the provisions of this Act and the by-laws of the Association. ^{Only qualified members eligible for Council.}

(4) The members of the Council now in office shall respectively hold office for the remainder of the term for which they were elected and until their successors are chosen. ^{Term of office.}

(5) Subsequently elected members shall hold office for three years from the time of their election and until their successors are chosen. ^{Idem.}

(6) A member chosen to fill a vacancy shall hold office for the residue of the term for which his predecessor was elected or appointed. ^{Of members chosen to fill vacancy.}

(7) Five members of the Council shall form a quorum. 1 Geo. V. c. 44, s. 8. ^{Quorum.}

9.—(1) At the close of the annual meeting the Council shall meet and choose from among themselves a President, a Vice-President, a Secretary, a Treasurer and such other officers as may be provided for by the by-laws. ^{Officers of the Association.}

(2) In the event of the office of President becoming vacant the Vice-President shall become President for the remainder of the term. ^{Filling vacancy of office of President;}

of members
of Council.

(3) All other vacancies among the officers or the members of the Council shall be filled by the Council.

Removal.

(4) The Council may remove any officer for misconduct or other sufficient cause, and may appoint his successor for the remainder of the term. 1 Geo. V. c. 44, s. 9.

Admission
by vote of
Council.

10.—(1) The Council may, by a vote of two-thirds of all the members thereof, admit to membership in the Association, without examination, a stenographic reporter who by reason of his professional reputation and standing is deemed qualified for membership.

Honorary
membership.

(2) The Council may also, by a two-thirds vote of all its members, admit as honorary members of the Association such persons resident in Ontario or elsewhere as they may deem deserving.

Status of
honorary
members.

(3) An honorary member shall not be entitled to vote at an election or at a meeting of the Association or to be elected a member of the Council. 1 Geo. V. c. 44, s. 10.

Annual
meeting.

11. The annual meeting of the members of the Association for the election of the Council, and for such other business as may be brought before such meeting, shall be held at such time and place and under such regulations and after such notices as the by-laws of the Association shall prescribe. 1 Geo. V. c. 44, s. 11.

Register of
members.

12.—(1) The Council shall cause to be kept by the Secretary a register in which shall be entered in alphabetical order the names of all members in good standing, and those members only whose names are entered in the register shall be entitled to the privileges of membership, and the register shall at all times be open to inspection by any person free of charge.

Register as
evidence.

(2) The register, or a copy of it certified by the Secretary, shall be *prima facie* evidence that the persons therein named are members of the Association in good standing. 1 Geo. V. c. 44, s. 12.

Limitation
of term of
diplomas
and certifi-
cate.

13. The Association may limit the term of all diplomas and certificates granted by it to one year from the date of granting the same, and may withhold the granting or renewal of the same, together with all the other privileges of membership, from any person who neglects to pay the prescribed fees when they are due and so long as they remain unpaid. 1 Geo. V. c. 44, s. 13.

Entrance
and annual
fees.

14.—(1) The Council may fix an entrance and an annual fee to be paid by all members to the Association, and may vary the amount from time to time; and no member shall be

personally liable for any debt of the Association beyond the amount of his unpaid fees.

(2) The Council may also prescribe examination fees to be paid by applicants for examination. 1 Geo. V. c. 44, s. 14. ^{Examination fees.}

15.—(1) No person shall be entitled to take or use the title of "Chartered Stenographic Reporter," or the letters "C.S.R.," either alone or in combination with any other words, or any name, title or description implying that he is a member of the Association, unless he is a member in good standing. ^{Restriction of right to use title.}

(2) Every person who uses such title or such letters contrary to the provisions of this section shall incur a penalty not exceeding \$25 for the first offence and not exceeding \$100 for each subsequent offence recoverable under *The Ontario Summary Convictions Act*. 1 Geo. V. c. 44, s. 15. ^{Penalty.}

16. The Association may by by-law provide for the suspension or expulsion, after due enquiry, of any member for misconduct or violation of the by-laws of the Association. 1 Geo. V. c. 44, s. 16. ^{Suspension and expulsion of members.}

17.—(1) All fees payable under this Act may be recovered as debts due to the Association. ^{Recovery of fees.}

(2) Penalties recovered under the authority of this Act shall be paid immediately on the recovery thereof by the convicting justice to the Treasurer of the Association. ^{Recovery and application of penalties.}

(3) The Council may allot such portion of a penalty as may be deemed expedient to the prosecutor or complainant. 1 Geo. V. c. 44, s. 17. ^{Idem.}

18. If a person ceases to be a member of the Association he shall not, nor shall his representatives, have any interest in or claim against the funds or property of the Association. 1 Geo. V. c. 44, s. 18. ^{Ex-members to have no claims against the funds.}

CHAPTER 169.

An Act respecting Chartered Accountants.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Chartered Accountants Act*. 1 Geo. V. c. 48, s. 1.

Institute of Accountants. 46 V. c. 62.

2. The Institute of Chartered Accountants of Ontario, hereinafter called the Institute, is continued. 1 Geo. V. c. 48, s. 2.

Powers as to real estate.

3.—(1) The Institute may purchase, take and acquire for the purposes of the Institute, but for no other purpose, and after acquiring the same may sell, mortgage, lease or dispose of any real estate.

Benevolent fund.

(2) The Institute may receive, manage and invest voluntary contributions and donations from members or others as a benevolent fund for the benefit of needy members or their families and the families of deceased members. 1 Geo. V. c. 48, s. 3.

Objects.

4. The objects of the Institute shall be to promote and increase the knowledge, skill and proficiency of its members in all things relating to the business or profession of an accountant, and to that end to establish classes, lectures and examinations, and to prescribe such tests of competency, fitness and moral character as may be thought expedient to qualify for admission to membership. 1 Geo. V. c. 48, s. 4.

Council.

5. There shall be a Council of the Institute hereinafter called the Council, which shall consist of fifteen members, of whom not less than two-thirds shall be public accountants, residing and practising within Ontario. 1 Geo. V. c. 48, s. 5.

Annual meeting.

6.—(1) An annual meeting shall be held for the election of the Council, and for such other business as may be brought before the meeting, at such time and place and under such regulations and after such notices as shall be determined by the by-laws of the Institute, and in default of such election being held at the proper time the existing Council shall continue to act until their successors are elected.

(2) Nominations of candidates for election to the Council shall be in writing, signed by two members of the Institute, and shall be lodged with the Secretary at least fourteen days before the date of the annual meeting. ^{Nominations for council.}

(3) A voting paper containing the names, alphabetically arranged, of the persons nominated shall be sent by mail to each member in good standing at least ten days before the date of the annual meeting. ^{Election of council.}

(4) The voting paper shall be signed by the voter and shall be lodged with the Secretary on or before the day of the annual meeting, and the Council shall be elected by means of such voting papers, whether the members voting be present at or absent from the annual meeting. ^{Voting papers.}

(5) All vacancies which occur in the Council, by death or otherwise, in the interval between two annual meetings, shall be filled by the Council. 1 Geo. V. c. 48, s. 6. ^{Vacancies.}

7. The Council shall elect from among its number a President, two Vice-Presidents, a Secretary and a Treasurer (the same person being eligible for both the last mentioned offices), and shall appoint a Registrar and such other officers as may be provided for by the by-laws. 1 Geo. V. c. 48, s. 7. ^{President and officers.}

8. The Council may fix an entrance and annual fee or subscription to be paid by all members, and may vary the amount thereof from time to time. 1 Geo. V. c. 48, s. 8. ^{Fees.}

9.—(1) The Council may make by-laws for carrying out the objects of the Institute, but no such by-law or any amendment thereto shall have force or take effect until it has been approved at an annual meeting of the Institute, or at a special general meeting called to consider the same. ^{By-laws.}

(2) Any such by-law may be annulled by the Lieutenant-Governor in Council. 1 Geo. V. c. 48, s. 9. ^{Annulment.}

10. The Council may,

- (a) prescribe a curriculum of studies to be pursued by the students; ^{Examinations.}
- (b) determine as to the fitness and moral character of persons applying to be examined;
- (c) prescribe the subjects upon which candidates for certificates of competency shall be examined;
- (d) fix standards of skill and competency;
- (e) establish a scale of fees to be paid by persons applying for examination;

(f) appoint examiners, define their duties and fix their remuneration; and

(g) make such rules and regulations, not contrary to the provisions of this Act or the by-laws of the Institute, in respect to examinations as may be expedient. 1 Geo. V. c. 48, s. 10.

When to be held.

11. The Council shall hold examinations at least once in each year. 1 Geo. V. c. 48, s. 11.

Equivalent examinations.

12. The Council shall by by-law prescribe the conditions upon which persons who have passed the examinations of other corporate bodies having the same or similar objects may be admitted as members of the Institute, and such conditions shall be reasonable and subject to amendment by the Lieutenant-Governor in Council, and if the Council omits to pass such a by-law the Lieutenant-Governor in Council may prescribe such conditions. 1 Geo. V. c. 48, s. 12.

Lectures.

13. The Institute may establish lectures and classes of students in accounts, and, subject to the approval of the Lieutenant-Governor in Council, may make arrangements with any University or College in Ontario for the attendance of students in accounts at such lectures or classes in such University or College as may come within the course of subjects prescribed by the rules, by-laws and regulations of the Institute, and may agree with any such University or College for the use of any library or museum or property belonging to or under the control of such University or College, and may affiliate with any such University or College, and may enter into all arrangements necessary for that end, upon such terms as may be agreed upon. 1 Geo. V. c. 48, s. 13.

Attendance at university.

Membership.

14. The membership of the Institute shall consist of two classes, namely, Fellows and Associates. 1 Geo. V. c. 48, s. 14.

Use of titles.

15. Every member of the Institute shall have the right to use the designation "Chartered Accountant," and may use after his name, if he is a Fellow, the initials "F.C.A.," signifying "Fellow of the Chartered Accountants," and if he is an Associate the initials "A.C.A.," signifying "Associate of the Chartered Accountants." 1 Geo. V. c. 48, s. 15.

Honorary membership.

16. Persons who have rendered conspicuous services to the Institute, either in the advancement of its educational objects or its general welfare or by material contributions to the library or other funds of the Institute, may, by the unanimous vote of the members present at any meeting of the Institute, be elected to honorary membership therein, but honorary membership shall not confer the right to use the

Status of such.

designation "Chartered Accountant," or to be elected to the Council or to vote. 1 Geo. V. c. 48, s. 16.

17.—(1) No person shall be entitled to take or use the designation "Chartered Accountant" or the initials "F.C.A.," "A.C.A.," or "C.A.," either alone or in combination with any other words, or any name, title or description implying that he is a Chartered Accountant, or any name, title, initials or description implying that he is a certified accountant or an incorporated accountant, unless he is a member of the Institute in good standing and registered as such. Restrictions as to use of titles.

(2) Any person who contravenes any of the provisions of this section shall incur a penalty not exceeding \$25 for each offence recoverable under *The Ontario Summary Convictions Act*. Penalties. Rev. Stat. c. 90

(3) This section shall not apply to those persons who, being members in good standing of the Dominion Association of Chartered Accountants on the 16th day of December, 1909, were on that day entitled to membership in the Institute or to apply therefor. 1 Geo. V. c. 48, s. 17. Exception as to certain members of D.A.C.A.

18.—(1) The Council shall cause to be kept by the Secretary or Registrar a register in which shall be entered in alphabetical order the names of all members in good standing, and those members only whose names are entered in the register shall be deemed entitled to the privileges of membership in the Institute, and such register shall at all times be subject to inspection by any person free of charge. Membership register.

(2) Such register, or a copy of the same duly certified by the Secretary or Registrar, shall be *prima facie* evidence in all courts and before all persons that the persons whose names are entered therein are members of the Institute in good standing, and the absence of the name of any person from such register shall be *prima facie* evidence that such person is not a member of the Institute. 1 Geo. V. c. 48, s. 18. Register as evidence.

19. The Institute may by by-law provide for the suspension or expulsion, on complaint and after due enquiry, of any member for misconduct or for violation of the rules or by-laws of the Institute. 1 Geo. V. c. 48, s. 19. Suspension or expulsion.

20. Nothing in this Act shall affect or interfere with the right of any person not a member of the Institute to practise as an accountant in Ontario, nor with the right of any person, not residing or having an office therein, to use any designation as accountant. 1 Geo. V. c. 48, s. 20. Rights of certain persons not affected.

CHAPTER 170.

An Act respecting The Board of Stationary Engineers.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

1. This Act may be cited as *The Stationary Engineers Act*.
1 Geo. V. c. 46, s. 1.

Interpretation.

2. In this Act,

"Board."

(a) "Board" shall mean the Board of Examiners appointed as hereinafter provided;

"Minister."

(b) "Minister" shall mean Minister of Agriculture;

"Steam Plant."

(c) "Steam plant" shall mean and include a steam boiler, a boiler and a steam engine and every part thereof and thing connected therewith or used with reference to any such boiler or engine or under the care of an engineer. 1 Geo. V. c. 46, s. 2.

Exception as to application of Act.

3. Nothing in this Act shall apply to the operation of any steam plant having a capacity of less than fifty horse power, nor to steam heating plants operating at a pressure of twenty pounds or under, nor to the operation of a locomotive engine or a steamboat or steamship engine or a hoist at a mine or quarry. 1 Geo. V. c. 46, s. 3.

Appointment of Board of Examiners.

4. The Lieutenant-Governor in Council may appoint a Board of Examiners consisting of three competent and independent engineers practically conversant with the construction of boilers and the operation of steam plants, who shall hold office during pleasure and who, subject to the regulations mentioned in the next following section, shall prescribe the subjects in which candidates for certificates of qualification as stationary engineers shall be examined, and shall conduct or provide for and supervise the examination of candidates and report thereon to the Minister. 1 Geo. V. c. 46, s. 4.

Government regulations.

5. The Lieutenant-Governor in Council, upon the recommendation of the Minister, may make regulations for:

Examinations and certificates.

(a) the examination of candidates, the granting of certificates and the evidence to be furnished by can-

didates as to previous training or experience and sobriety and good character;

- (b) determining the time of duration of certificates and their renewal; Duration of certificates.
- (c) fixing the fees to be paid by candidates upon examination and for certificates and their renewal; Fees.
- (d) prescribing the causes for which a certificate may be revoked, cancelled or suspended; and for Prescribing causes for cancellation.
- (e) fixing the fees or other remuneration to be paid to the members and officers of the board. Remuneration of Board and staff. 1 Geo. V. c. 46, s. 5.

6. No person shall be eligible for examination unless he is a British subject or has resided in Canada for at least one year. 1 Geo. V. c. 46, s. 6. Candidate to be British subject or resident for one year.

7.—(1) On the recommendation of the Board, and on payment of the prescribed fees, the Minister may issue certificates of qualification to stationary engineers. Issue of certificates.

(2) Subject to the regulations a certificate may be revoked, cancelled or suspended by the Minister on the recommendation of the Board at any time. Cancelling certificates.

(3) Every stationary engineer shall, during the continuance of his certificate, register with the Board on or before the 1st day of February of each year on a form to be furnished by the Board, and any stationary engineer who fails to do so shall not continue in charge of a steam plant unless by special permission of the Board. 1 Geo. V. c. 46, s. 7. Annual registry.

8. A person who is not the holder of a certificate shall not operate or have charge of any steam plant, except in case of emergency when he may be employed in operating any steam plant for a period not exceeding thirty days at any one time. 1 Geo. V. c. 46, s. 8. Unqualified person not to act.

9. The Board, at its discretion, may grant a provisional certificate, to be good for a period not to exceed one year, to any person who holds a stationary engineer's certificate from the board of examiners or other duly constituted authority of any other Province of Canada. 1 Geo. V. c. 46, s. 9. Provisional certificate.

10. The certificates shall at all times be exposed to view in the engine or boiler room in which the holder thereof is employed, and failure to keep such certificate exposed shall be *prima facie* evidence of the lack of qualification under this Act. 1 Geo. V. c. 46, s. 10. Certificate to be exposed in engine room.

11. This Act shall not apply to firemen or other workmen acting under the personal direction and supervision of any engineer holding a certificate under this Act who is actually Firemen and other workmen not within Act.

in charge of a steam plant, or to the employees of engine builders or steam plant contractors engaged in installing, setting up or testing a boiler or steam plant. 1 Geo. V. c. 58, s. 11.

Appeal to Minister.

12. Any person who deems himself aggrieved by the decision of the Board may appeal therefrom to the Minister, upon giving such notice as the Minister may prescribe, and the decision of the Minister shall be final. 1 Geo. V. c. 46, s. 12.

Report of Board to Minister.

13. The Board shall, on or before the 15th day of January in every year, make to the Minister a report in writing for the year ending on the 31st day of December of the previous year showing:

- (a) the number of certificates granted, and the persons to whom the same were granted;
 - (b) the number of applications for certificates refused and the causes for refusal;
 - (c) the number of certificates revoked, cancelled or suspended, and the causes for the same;
 - (d) the amount of fees received from candidates or holders of certificates;
 - (e) such other matters as may be directed by the Minister or the Lieutenant-Governor in Council.
- 1 Geo. V. c. 46, s. 13.

Inspection by members of Board.

14.—(1) Any member of the Board, on presentation of authority in writing signed by the Minister, may enter any premises wherein he has reason to believe there is a steam plant, and make such inspection as may be necessary to determine whether the provisions of this Act are being complied with.

Penalty for obstructing Board.

(2) Any person who interferes with or obstructs a member of the Board in the exercise of the powers conferred on him shall incur a penalty not exceeding \$100, recoverable under

Rev. Stat. c. 90. *The Ontario Summary Convictions Act.* 1 Geo. V. c. 46, s. 14.

Penalty for operating without license.

15. Except as provided in section 8 every person who operates a steam plant as the engineer in charge thereof without the certificate required by this Act, and every person employing him or permitting him so to do, shall incur a penalty of not less than \$10 nor more than \$25 recoverable under

Rev. Stat. c. 90.

The Ontario Summary Convictions Act. 1 Geo. V. c. 46, s. 15.

Factory Inspector may be appointed to Board.
Rev. Stat. c. 229.

16. An inspector appointed under *The Factory, Shop and Office Building Act* may be appointed a member of the Board, and it shall be the duty of the Inspectors of Factories to assist in the enforcement of this Act, to report to the Board any violation thereof, and to furnish to the Board such information as they may have as to the conduct and capability of any person holding or applying for a certificate. 1 Geo. V. c. 46, s. 16.

CHAPTER 171.

An Act respecting Veterinary Surgeons.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Veterinary Surgeons Act*. Short title.
1 Geo. V. c. 45, s. 1.

2. Any veterinary practitioner holding the diploma of the Agriculture and Arts Association or that of the Ontario Veterinary College or any other diploma or certificate declared by the Lieutenant-Governor in Council to entitle the holder thereof to use the title "Veterinary Surgeon," shall be entitled to professional fees in attending any Court as a witness in such cases as relate to the profession. 1 Geo. V. c. 45, s. 2.

Witness fees
of veterinary
practitioners.

3. Any person not possessing a diploma or proper certificate from The Ontario Veterinary College or a diploma or certificate of a college whose diplomas or certificates are declared by the Lieutenant-Governor in Council to entitle the holders thereof to use the title of Veterinary Surgeon who appends to his name the term "Veterinary Surgeon," or any abbreviation thereof, and any person who wilfully and falsely pretends to be, or who wilfully and falsely takes or uses any name, title, addition, abbreviation or description implying or calculated to lead people to infer that he is, or is recognized by law as a veterinary surgeon, within the meaning of this Act, or that he possesses a diploma or certificate from any such college, shall incur a penalty not exceeding \$100, and not less than \$25, recoverable under *The Ontario Summary Convictions Act*. 1 Geo. V. c. 45, s. 3.

Penalty for
wrongfully
assuming
title of veter-
inary sur-
geon.

Rev. Stat. c. 90.

4.—(1) A graduate of a Veterinary College recognized by the Lieutenant-Governor in Council may practice in Ontario upon passing all the examinations of the senior class of the Ontario Veterinary College at the time and place of the annual examinations of the aforesaid Ontario Veterinary College.

Admission
of graduates
of recognized
colleges.

(2) The applicant for such examination shall pay a fee of \$25, and shall produce a veterinary preceptor's testimonial certifying that he has practised veterinary surgery under said preceptor for at least six months, or in lieu of said testimonial a statutory declaration certifying that the applicant has practised veterinary surgery for at least one year after graduating from such recognized Veterinary College. 3-4 Geo. V. c. 18, s. 31.

Conditions
of admission.

CHAPTER 172.

An Act respecting the Culling and Measurement of
Saw Logs cut upon Public Lands.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Ontario Cullers Act*.
1 Geo. V. c. 47, s. 1.

Interpretation.

2. In this Act,

"Department."

(a) "Department" shall mean the Department of Lands, Forests and Mines;

"Minister."

(b) "Minister" shall mean the Minister of Lands, Forests and Mines;

"Public lands."

(c) "Public Lands" shall include Crown lands, school lands and clergy lands;

"Saw-logs."

(d) "Saw-logs" shall include logs of pine of whatever length whether round or flatted. 1 Geo. V. c. 47, s. 2.

Examination of applicants for licenses to cull and measure saw-logs.

3. The Lieutenant-Governor in Council may appoint as many Boards of Examiners as he may deem necessary, each consisting of three skilled persons, any two of whom shall form a quorum, whose duty it shall be to examine, test and report upon the ability and knowledge of all applicants desiring to be licensed to cull and measure saw-logs, cut on Public Lands, and to perform such other duties as may be assigned to them by the Lieutenant-Governor in Council. 1 Geo. V. c. 47, s. 3.

Oath of examiner.

4.—(1) Every Examiner, before entering on his duties, shall take and subscribe an oath to the following effect:

That I, _____, will act as Examiner of Cullers to the best of my ability and knowledge, and will conduct the examinations without fear, favour or affection, and recommend for licenses only those persons who have satisfactorily proved their fitness to discharge the duties of culling and measuring saw-logs.

To be transmitted to Minister.

(2) The oath shall be transmitted to the Minister. 1 Geo. V. c. 47, s. 4.

Fees of examiners.

5. The Lieutenant-Governor in Council may authorize the payment to each member of such Board, as remuneration for

his services, of a sum not exceeding \$4 per day while actually employed as such Examiner. 1 Geo. V. c. 47, s. 5.

6. Every Board shall sit at such places and on such dates ^{Sittings of boards of examiners.} as may be fixed by the Minister, and shall examine all candidates who present themselves before them, and, at the close of the examination, or as soon after as may be, shall transmit to the Minister the names of such of the candidates as they ^{Reports.} believe are trustworthy and of good character, and who have passed a satisfactory examination, and whom they recommend as having the requisite skill and knowledge to warrant their being licensed as cullers. 1 Geo. V. c. 47, s. 6.

7. Every person intending to present himself for examination as a culler shall, on or before the first day of May in any year, give notice in writing to the Minister of such intention, and of his post office address, and shall pay into the Department \$4 as an examination fee. 1 Geo. V. c. 47, s. 7. ^{Candidates' notice and fees.}

8. The Minister may issue a license to any person reported ^{License to cullers.} as competent to perform the duties of a culler, such license to be in the form following, and to remain in force until cancelled:

To of the (County or District) of

By virtue of authority vested in me by *The Ontario Cullers' Act*, I hereby authorize you to act, during pleasure, as culler of saw-logs cut on Public Lands within Ontario.

Given under my hand this day of 19

Minister of Lands, Forests and Mines.

1 Geo. V. c. 47, s. 8.

9.—(1) Before such license is issued each successful applicant shall take an oath to the following effect: ^{Oath of applicant for license.}

That I, , while acting as licensed culler, without fear, favour or affection, and to the best of my judgment and skill, will correctly measure all saw-logs cut on Public Lands which I may be employed to measure, and make true return of the same to the Department of Lands, Forests and Mines, or its agents.

(2) The oath shall be transmitted to the Minister. 1 Geo. V. ^{To be sent to Minister.} c. 47, s. 9.

10.—(1) No person other than a licensed culler shall make measurements of saw-logs cut upon Public Lands for the purposes of a return to the Department; but where it is made to appear to the satisfaction of the Minister that the services of a licensed culler are not procurable the Minister may issue a special permit to any trustworthy and skilled person to act as culler, upon his taking the prescribed oath, but such permit shall not extend beyond the 1st day of July next following its date. ^{Unlicensed persons not to make measurements.}

Saving.

(2) This section shall not apply to the operations of any lumber company, person or firm whose gross annual output is under 250,000 feet board measure. 1 Geo. V. c. 47, s. 10.

Duties of
cullers.

11. It shall be the duty of every culler to measure fairly and correctly to the best of his skill, knowledge and ability all saw-logs which he may be employed to measure, making only such deductions as are necessary to allow for rots or other defects, and to enter in a book of record, for the purpose of return to the Department, what he believes to be the proper contents of the logs, noting also the number of saw-logs rejected as worthless commonly called culls. 1 Geo. V. c. 47, s. 11.

Idem.

12. Upon all logs culled or rejected as wholly worthless he shall mark the word "cull" in plain letters, but he shall not mark "cull" upon any log which is intended to be hauled to any river, lake or stream for the purpose of being driven to a mill. 1 Geo. V. c. 47, s. 12.

Inspection
of books and
records of
cullers.

13. All licensed cullers shall submit their books and records of measurements for the inspection of any Crown timber agent, Crown timber ranger, or other officer of the Department when called upon so to do, and shall give all information asked for if in their power, and furnish any statements or copies of statements which the Department or its agents may require. 1 Geo. V. c. 47, s. 13.

Returns by
cullers.

14. At the end of the season every culler shall make a sworn return, upon forms supplied by the Department or its agents, which shall show the number of pieces measured and accepted by him, and their respective lengths and diameters, and also the number of pieces rejected as worthless, 1 Geo. V. c. 47, s. 14.

Penalty for
failure to
perform
duties.

15. If a culler neglects or refuses to carry out and obey the provisions of this Act, or any regulations made under it, the Minister may cancel his license and such culler shall not thereafter be eligible to cull or measure saw-logs cut upon Public Lands, and if he does so he shall incur a penalty of not less than \$10 or more than \$50 recoverable under *The*

Rev. Stat. c. 90. *Ontario Summary Convictions Act*. 1 Geo. V. c. 47, s. 15.

Penalty for
making
improper
measure-
ments or
false returns.

16. If a culler wilfully undermeasures or mismeasures or improperly culls and rejects any saw-logs, or makes a false return for the purpose of deceiving or defrauding, his license shall be revoked and he shall not thereafter be permitted to act as culler under this Act; and in addition he shall incur a penalty of not less than \$20 or more than \$100, recoverable under *The Ontario Summary Convictions Act*. 1 Geo. V. c. 47, s. 16.

Rev. Stat. c. 90.

Act not to
affect regula-
tions under
Rev. Stat.
c. 29.

17. This Act shall not abrogate any regulations made under *The Crown Timber Act*, except in so far as they may be inconsistent herewith. 1 Geo. V. c. 47, s. 17.

CHAPTER 173.

An Act respecting Innkeepers and Others.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Innkeepers' Act*. 1 Geo. V. Short title. c. 49, s. 1.

2. In this Act,

Interpreta-
tion.

(a) "Inn" shall include an hotel, inn, tavern, public "Inn." house or other place of refreshment, the keeper of which is by law responsible for the goods and property of his guests; and

(b) "Innkeeper" shall mean the keeper of any such "Innkeeper." place. 1 Geo. V. c. 49, s. 2.

3.—(1) Every innkeeper, boarding-house keeper and lodging-house keeper shall have a lien on the baggage and property of his guest, boarder or lodger for the value or price of any food or accommodation furnished to him or on his account. Lien on baggage, etc., for accommodation, etc., furnished.

(2) In addition to all other remedies provided by law he shall have the right, in case the same remains unpaid for three months, to sell by public auction the baggage and property of such guest, boarder or lodger, on giving one week's notice by advertisement in a newspaper published in the municipality in which the inn, boarding-house, or lodging-house is situate, or in case there is no newspaper published in the municipality, in a newspaper published nearest to such inn, boarding-house, or lodging-house, of the intended sale. And power to sell. Notice of sale.

(3) The advertisement shall state the name of the guest, boarder or lodger, the amount of his indebtedness, the time and place of sale, and the name of the auctioneer, and shall give a description of the baggage or other property to be sold. Particulars in notice.

(4) The innkeeper, boarding-house keeper, or lodging-house keeper may apply the proceeds of the sale in payment of the amount due to him, and the costs of such advertising and sale, and shall pay over the surplus, if any, to the person entitled thereto on application being made by him therefor. Proceeds of sale. application of.

Lien on
horses and
carriages.

(5) Every keeper of a livery stable or a boarding stable shall have a lien on every horse or other animal boarded at or carriage left in such livery stable or boarding stable for his reasonable charges for boarding and caring for such horse, animal or carriage.

Lien on
horses, etc.,
and power
to sell.

(6) Where an innkeeper, boarding-house keeper, lodging-house keeper, livery stable keeper or boarding stable keeper has a lien upon a horse, other animal or carriage for the value or price of any food or accommodation supplied, or for care or labour bestowed thereon, he shall, in addition to all other remedies provided by law, have the right, in case the same remains unpaid for two weeks, to sell by public auction such horse, animal or carriage on giving two weeks' notice by advertisement in a newspaper published in the municipality in which the inn, boarding-house, lodging-house, livery stable or boarding stable is situate, or, in case there is no newspaper published in the municipality, in a newspaper published nearest to such inn, boarding-house, lodging-house, livery stable or boarding stable of the intended sale.

Advertisement
of intended
sale.

(7) The advertisement shall state the name, if known, of the person or persons who brought such horse, animal or carriage to the inn, boarding-house, lodging-house, livery stable or boarding stable, the amount of the indebtedness, and the name of the auctioneer, and shall give a description of the horse, animal or carriage.

Proceeds of
sale,
application of.

(8) The innkeeper, boarding-house keeper, lodging-house keeper, livery stable keeper or boarding stable keeper may apply the proceeds of the sale in payment of the amount due to him, and the costs of such advertisement and sale, and shall pay over the surplus, if any, to the person entitled thereto on application being made by him therefor. 1 Geo. V. c. 49, s. 3.

Limitation of
innkeeper's
liability.

4.—(1) No innkeeper shall be liable to make good to any guest of such innkeeper any loss of or injury to goods or property brought to his inn, not being a horse or other live animal, or any gear appertaining thereto, or any carriage, to a greater amount than the sum of \$40 except:

Except where
default or
neglect.

(a) where such goods or property have been stolen, lost, or injured through the wilful act, default, or neglect of such innkeeper or any servant in his employ;

or unless de-
posited with
him for safe
keeping.

(b) where such goods or property have been deposited expressly for safe custody with such innkeeper.

Conditions of
liability.

(2) In case of such deposit it shall be lawful for such innkeeper, if he thinks fit, to require, as a condition of his liability, that such goods or property shall be deposited in a box or other receptacle, fastened and sealed by the person depositing the same. 1 Geo. V. c. 49, s. 4.

5. If an innkeeper refuses to receive for safe custody, as mentioned in clause (b) of subsection 1 of the next preceding section, any goods or property of his guest, or if such guest, through any default of such innkeeper, is unable to deposit such goods or property the innkeeper shall not be entitled to the benefit of this Act in respect thereof. 1 Geo. V. c. 49, s. 5.

Consequences of failure to take charge of goods.

6. Every innkeeper shall cause to be kept conspicuously posted up in the office and public rooms and in every bedroom in his inn a copy of section 4 printed in plain type; and he shall be entitled to the benefit thereof in respect of such goods or property only as are brought to his inn while such copy is so posted up. 1 Geo. V. c. 49, s. 6.

Copy of section 4 to be conspicuously exhibited.

7. The lien of an innkeeper or boarding-house keeper upon the wearing apparel of any servant or labourer shall not extend to any greater sum than \$6, and on payment or tender of that sum, or of any less sum due, such wearing apparel shall be immediately given up, whatever may be the amount due by such servant or labourer. 1 Geo. V. c. 49, s. 7.

Limitation of lien on wearing apparel of servant or labourer to \$6.

CHAPTER 174.

An Act respecting Embalmers and Undertakers.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Embalmers' and Undertakers' Act*. 1 Geo. V. c. 51, s. 1.

Interpretation.

2. In this Act,

"Board."

(a) "The Board" shall mean the Board of Examiners appointed under this Act.

"Embalming."

(b) "Embalming" shall mean the disinfection or preservation of the dead human body, entire or in part, by the use of chemical substances, fluids or gases, ordinarily used, prepared or intended for such purpose, either by outward application of such chemical substances, fluids or gases on the body, or by the introduction of the same into the body by vascular or hypodermic injection, or by direct application into the organs or cavities.

"Minister."

(c) "Minister" shall mean the member of the Executive Council for the time being charged by the Lieutenant-Governor in Council with the administration of this Act.

"Regulations."

(d) "Regulations" shall mean regulations made under the authority of this Act. 1 Geo. V. c. 51, s. 2.

Board of Examiners.

3. The Lieutenant-Governor in Council may appoint a Board of Examiners consisting of five persons practically conversant with the business of embalming who shall, subject to the regulations,

Interpretation.

(a) prescribe the subjects in which candidates for certificates of qualification as embalmers shall be examined,

(b) conduct examinations of candidates or provide for and supervise the examinations of candidates for such certificates and report thereon to the Minister,

(c) issue licenses and certificates of qualification to applicants therefor, who have passed such exam-

inations or are otherwise entitled thereto. 1 Geo. V. c. 51, s. 3.

4. Any three members of the Board shall form a quorum. Quorum.
1 Geo. V. c. 51, s. 4.

5. The Lieutenant-Governor in Council may appoint one Secretary.
of the members of the Board or some other person to be the
Secretary of the Board. 1 Geo. V. c. 51, s. 5.

6. The Secretary of the Board shall keep a register in Register.
which shall be entered the name of every person to whom a
certificate of qualification is granted under this Act, and the
date at which the same is granted. 1 Geo. V. c. 51, s. 6.

7. The Lieutenant-Governor in Council may from time to Regulations
time make regulations, by Lieuten-
ant-Gov-
ernor in
Council.

(a) for the examination of candidates for licenses and
certificates of qualification and permits, the grant-
ing of such licenses, certificates and permits, and
the evidence to be furnished by candidates as to
sobriety and good character and as to previous
training and experience;

(b) for determining the time of continuance of such
licenses and certificates and permits and renewal
of same;

(c) for fixing the fees to be paid by such candidates
upon any such examination, or for any license or
certificate of qualification or permit or renewal
thereof;

(d) for prescribing the causes for which any license or
certificates or permits may be revoked, cancelled
or suspended;

(e) for fixing the fees or other remuneration to be paid
to the members and staff of the Board. 1 Geo. V.
c. 51, s. 7.

8. Every person engaged in or carrying on the business of Persons
embalming in Ontario at the time of the appointment of a carrying on
Board of Examiners under this Act and who applies to the business
Board for a certificate of qualification within one year before 1st
thereafter, shall, upon furnishing such evidence of sobriety, July, 1911.
good character and experience as the Board may require,
and upon payment of the prescribed fee, be entitled to re-
ceive a certificate of qualification from the Board. 1 Geo. V.
c. 51, s. 8.

9. Any person who feels himself aggrieved by the deci- Appeal from
sion of the Board may appeal therefrom to the Minister upon Board to
giving such notice as the Minister may prescribe, and the Minister.
decision of the Minister shall be final. 1 Geo. V. c. 51, s. 9.

Annual
report of
Board.

10. The Board shall make a report to the Minister on or before the 31st day of December in every year, shewing

- (a) the number of certificates granted by them during the preceding year, and the persons to whom granted;
 - (b) the number of applications for certificates refused during the preceding year and the causes for refusing the same;
 - (c) the number of certificates revoked, cancelled or suspended during the preceding year;
 - (d) the amount of fees received by them from candidates or owners of certificates during the preceding year;
 - (e) the travelling and other expenses of the Board and the Secretary, and the fees, salary or other remuneration received by the Board and the Secretary; and
 - (f) such other matters as may be directed by the Minister or the Lieutenant-Governor in Council.
- 1 Geo. V. c. 51, s. 10.

Audit of
receipts and
expenditure.

11. The receipts and expenditure of the Board shall be audited by a Chartered Accountant, not a member of the Board, and the fees, salary or other remuneration paid to the Board shall be paid out of the fees received from candidates or others and shall in all cases be subject to the approval of the Minister. 1 Geo. V. c. 51, s. 11.

Certificate
to be kept

exposed
to view.

12. A certificate held by any person under this Act shall at all times be exposed to view in the place of business carried on by such person or in the place in which he is employed, and failure to keep such certificate so exposed shall be *prima facie* evidence of the lack of qualification under this Act. 1 Geo. V. c. 51, s. 12.

Penalty for
professing
to be
licensed.

13. Every person who, not being the holder of a certificate of qualification issued by the Board or of a renewal thereof, holds himself out as an embalmer, or uses any sign or letters, or words or abbreviations, importing that he is an embalmer, shall incur a penalty not exceeding \$25. 1 Geo. V. c. 51, s. 13.

Notice to
be given
Secretary of
Provincial
Board of
Health.

14.—(1) No person shall carry on business as an undertaker in Ontario without a license from the Provincial Board of Health which shall be issued upon such terms and subject to such conditions and regulations and upon payment of such fee and subject to cancellation or suspension for such cause as the Provincial Board of Health with the approval of the Lieutenant-Governor in Council may prescribe.

(2) Every person carrying on business as an undertaker without such license, shall incur a penalty of \$25. 1 Geo. V. c. 51, s. 14; 3-4 Geo. V. c. 18, s. 32. Penalty for neglect to give notice.

15.—(1) Every person who as an undertaker conducts or directs the burial of any human body shall forthwith, upon the form prescribed by the regulations of the Provincial Board of Health, notify the Secretary of the Provincial Board of Health of such burial. Returns of burials.

(2) Any person neglecting or refusing to carry out the provisions of this section shall incur a penalty of \$25, and upon conviction his license may be suspended or cancelled by the Board. 1 Geo. V. c. 51, s. 15. Penalty.

16. *The Ontario Summary Convictions Act* shall apply to every prosecution under this Act. 1 Geo. V. c. 51, s. 16. Application of Rev. Stat. c. 90.

CHAPTER 175.

An Act respecting Money-Lending.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PART I.

PRELIMINARY.

- Short title. 1. This Act may be cited as *The Ontario Money-Lenders Act*. 2 Geo. V. c. 30, s. 1.
- Interpreta- 2. In this Act:—
tion.
- “Cost of the (a) “Cost of the loan” shall mean the whole cost to the
loan.” debtor of money lent and shall include interest, discount, subscription, premium, dues, bonus, commission, brokerage fees and charges, but not actual lawful and necessary disbursements made to a Registrar of Deeds, a Master or Local Master of Titles, a Clerk of a County or District Court, a Sheriff or a Treasurer of a municipality;
- “Court.” (b) “Court” shall mean a Court having jurisdiction in an action for the recovery of a debt or money demand to the amount claimed by a creditor in respect of money lent;
- “Creditor.” (c) “Creditor” shall include the person advancing money lent and the assignee of any claim arising or security given in respect of money lent;
- “Debtor.” (d) “Debtor” shall mean and include a person to whom or on whose account money lent is advanced, and every surety and endorser or other person liable for the repayment of money lent or upon any agreement or collateral or other security given in respect thereof;
- “Money-lender.” (e) “Money-lender” shall mean a person whose business is that of money-lending or who carries on that business in connection with any other business, whether the money lent is his own or that of any other person, or who advertises or holds himself out as or who by any notice or sign indicates that he is a money lender;

(f) "Money lent" shall include money advanced on ^{"Money lent."} account of any person in any transaction which, whatever its form may be, is substantially one of money-lending or securing the repayment of money so advanced;

(g) "Registrar" shall mean the Registrar of Loan Corporations for Ontario. 2 Geo. V. c. 30, s. 2.

3. Every prosecution under this Act shall be taken before ^{Prosecutions.} a police magistrate or two justices of the peace under *The Ontario Summary Convictions Act*. 2 Geo. V. c. 30, s. 3. ^{Rev. Stat. c. 90.}

PART II.

RELIEF AGAINST UNCONSCIONABLE TRANSACTIONS.

4. Where, in respect of money lent, the Court finds that ^{Jurisdiction} having regard to the risk and to all the circumstances the ^{of Courts.} cost of the loan is excessive and that the transaction is harsh ^{Imp. Act, 63-64 Vict. c. 51, s. 1.} and unconscionable the Court may—

- (a) reopen the transaction and take an account between ^{Re-opening account.} the creditor and the debtor;
- (b) notwithstanding any statement or settlement of ^{Re-opening former settlements.} account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of the principal and the cost of the loan;
- (c) order the creditor to repay any such excess if the ^{Order for repayment of excess.} same has been paid or allowed on account by the debtor;
- (d) set aside either wholly or in part or revise or alter ^{Setting aside or revising contract.} any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order him to indemnify the debtor. 2 Geo. V. c. 30, s. 5.

5. The powers conferred by section 4 may be exercised in— ^{How powers of Court may be invoked.}

- (a) an action or proceeding by a creditor for the ^{In action by creditor.} recovery of money lent;
- (b) an action by the debtor notwithstanding any provision or agreement to the contrary, and notwithstanding that the time for repayment of the loan or any instalment thereof has not arrived; ^{In action by debtor.}

In other proceedings.

(c) an action or proceeding in which the amount due or to become due in respect of money lent is in question. 2 Geo. V. c. 30, s. 6.

Application of Part II.

6. This Part shall apply in respect of money lent after the commencement of this Act, and to any agreement or security made or taken after the commencement of this Act in respect of money lent either before or after the commencement of this Act. 2 Geo. V. c. 30, s. 7.

Saving bona fide holder for value, and existing jurisdiction.

7. Nothing in this Part shall affect the rights of a *bona fide* assignee or holder for value without notice, or derogate from the existing powers or jurisdiction of any Court. 2 Geo. V. c. 30, s. 8.

PART III.

MONEY-LENDERS.

Not to affect.

8. Sections 9 to 15 shall not apply to a—

Pawnbrokers.

(a) pawnbroker in respect of business carried on by him in accordance with the provisions of *The Pawnbrokers' Act*;

Rev. Stat. c. 176.

Insurance and loan corporations.

(b) corporation registered under *The Ontario Insurance Act* or *The Loan and Trust Corporations Act*;

Rev. Stat. c. 183, 184.

Banks.

(c) chartered bank of Canada;

Persons lending incidentally in their business.

(d) person carrying on any business, not having for its primary object the lending of money, in the course of which and for the purposes of which he lends money;

Solicitors investing money for clients.

(e) solicitor lending the money of a client and receiving for his services only solicitor's fees and disbursements, and a reasonable commission for procuring the investment, and who is not otherwise a party to the transaction or a sharer in the profits thereof, or liable to bear any loss arising therefrom; or

Trustees, etc.

(f) trustee, executor, guardian, committee or person acting in any other fiduciary capacity and lending money in his hands in that capacity, and receiving therefor only the remuneration fixed by the instrument creating the trust or appointing him, or by the order of a Court, and who is not a sharer in the profits of the investment or liable to bear any loss arising therefrom. 2 Geo. V. c. 30, s. 9.

Impl. Act, 63-64 V. c. 51, s. 6.

Registration of money lenders.

9.—(1) Every money-lender before carrying on the business of money-lending shall register as a money-lender with the Registrar.

(2) The Registrar shall keep in his office a register to be Register. called "The Money-Lenders' Register," in which he shall enter the name of every money-lender, the name under which the business of money-lending is to be carried on and the address, or all the addresses if more than one, at which it is carried on.

(3) The registration shall continue in force for one year Duration of registry. from the date thereof. 2 Geo. V. c. 30, s. 10.

10. No corporation shall be registered as a money-lender Head office and directors' residence. unless its head office is in Ontario and the directors or the members of the governing body thereof, by whatever name known, reside in Ontario. 2 Geo. V. c. 30, s. 11.

11. Subject to the provisions of subsection 1 of section 9, Prohibitions. no person shall,

- (a) carry on business as a money-lender without being registered; Carrying on business without registry.
- (b) carry on such business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address; Or otherwise than as registered.
- (c) enter into any agreement in the course of his business as a money-lender with respect to the advance of money lent, or take any security for money lent in the course of such business otherwise than in his registered name; Or transacting business in other than registered name.
- (d) on reasonable request, and tender of a reasonable sum for expenses, fail to furnish a debtor for money lent with a copy of any document relating to the transaction. 2 Geo. V. c. 30, s. 12. Or failing to furnish copy of document. Imp. Act, 63-64 V. c. 51, s. 2.

12.—(1) Every person who violates the provisions of section 11 shall incur a penalty not exceeding \$200, and on conviction for a second or any subsequent offence shall be liable to imprisonment for a period not exceeding six months, or, in the case of a corporation, shall incur a penalty not exceeding \$1,000. Penalty.

(2) No prosecution for an offence under this section shall be commenced without the consent of the Attorney General Consent of Attorney-General. or the Crown Attorney for the County or District in which the offence is committed. 2 Geo. V. c. 30, s. 13.

13.—(1) Every money-lender and every manager, agent or clerk of a money-lender, and every director, manager or other officer of a corporation carrying on the business of a money-lender, who by any false, misleading or deceptive statement, representation or promise, or by any dishonest concealment of material facts, fraudulently induces or attempts to induce any person to borrow money or to be responsible for Fraudulent statements or concealment by money lenders.

116 s.

Imp. Act, 63,
64 V. c. 51,
s. 4.

the repayment thereof, or to agree to the terms of any transaction with respect to money lent, shall incur a penalty not exceeding \$500.

Cancellation
or suspension
of registry.

(2) The Lieutenant-Governor in Council may direct the cancellation or suspension of the registration of any person convicted of an offence under subsection 1. 2 Geo. V. c. 30, s. 14.

Burden of
proof of
Registration.

14. In every prosecution under this Part the burden of proof of registration shall be upon the person charged. 2 Geo. V. c. 30, s. 15.

Regulations.

15. The Lieutenant-Governor in Council may make such regulations as he may deem expedient respecting the mode of registration, the fee to be paid thereon, and the inspection of the register and the fees payable therefor, and generally for better carrying out the provisions of this Part. 2 Geo. v. c. 30, s. 16.

CHAPTER 176.

An Act respecting Pawnbrokers.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Ontario Pawnbrokers Act*. Short title.
1 Geo. V. c. 50, s. 1.

INTERPRETATION.

2.—(1) In this Act,

(a) "Municipality" shall not include county;

Interpreta-
tion,
"Municipi-
pality."

(b) "Pawnbroker," shall mean a person who exercises the trade of receiving or taking by way of pawn or pledge any goods for the repayment of money lent thereon;

"Pawn-
broker."

(c) "Pawner," shall mean a person delivering an article for pawn to a pawnbroker;

"Pawner."

(d) "Pawn ticket," shall mean the note or memorandum referred to in section 9;

"Pawn
ticket."

(e) "Pledge," shall mean an article pawned with a pawnbroker;

"Pledge."

(f) "Shop," shall include dwelling-house and warehouse or other place of business or place where business is transacted.

"Shop."

(2) In order to prevent evasion of the provisions of this Act every person shall be deemed to be a pawnbroker who

Who to be
deemed
pawnbrokers.

(a) keeps a shop for the purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon; or

35 and 36 V.
Imp., c. 93, s. 6.

(b) purchases or receives or takes in goods or chattels and pays or advances or lends thereon any sum of money not exceeding \$50,

with or under an agreement or understanding expressed or implied or to be from the nature and character of the dealing reasonably inferred that those goods or chattels may be afterwards redeemed or repurchased on any terms, and every such transaction, payment, advance and loan shall be deemed a

pawning, pledging and loan respectively under this Act. 1 Geo. V. c. 50, s. 2.

LICENSE.

Licenses.

3.—(1) No person shall exercise the trade of a pawnbroker unless he obtains a license therefor under the hand of the treasurer of the municipality in which he carries on or purposes to carry on such trade, nor unless he obtains a renewal of the same annually, but no license shall be issued or renewed, unless under the authority of a by-law of the council of the municipality.

Refusal to
grant or
renew.

(2) A license or renewal may be refused without any cause assigned.

Fee for
license.

(3) The sum of \$60 shall be paid for every license or renewal thereof to the treasurer, for the use of the municipality, and every pawnbroker shall give to the municipality security to the satisfaction of the treasurer thereof in the sum of \$1,000, for the due observance by him of the provisions of this Act.

Penalty for
neglect to
take out
license.

(4) Every person exercising such trade without having obtained a license or renewal thereof shall incur a penalty of \$50 for every pledge he takes. 1 Geo. V. c. 50, s. 3.

License to
cover only
one shop.

4. No person shall, by virtue of one license, keep more than one shop. 1 Geo. V. c. 50, s. 4.

License to
partners.

5. Only one license shall be necessary where two or more persons carry on trade as pawnbrokers in partnership in the same shop. 1 Geo. 5, c. 50, s. 5.

Agents, ser-
vants and
apprentices
of pawn-
brokers.

35 & 36 Vict.
Imp. c. 93, s. 8.

6. For the purposes of this Act anything done or omitted by the servant, apprentice or agent of a pawnbroker in the course of or in relation to the business of a pawnbroker shall be deemed to be done or omitted, as the case may be, by the pawnbroker; and any thing by this Act authorized to be done by a pawnbroker may be done by his servant, apprentice or agent. 1 Geo. V. c. 50, s. 6.

DUTIES OF PAWNBROKER.

7.—(1) Every pawnbroker shall always

Sign to be
kept up by
pawnbroker.

(a) keep exhibited in large, legible characters on a sign over the outer door of his shop his name and the word "Pawnbroker"; and

Notice of
rates
allowed.

(b) keep displayed in a conspicuous part of his shop a notice painted or printed in English in large, legible characters so as to be visible to any person

pawning or redeeming pledges, showing the rate of profit authorized by law to be taken, and also the various prices of the pawntickets to be given according to the rates hereinafter mentioned, and of the expense of obtaining a copy of the pawnticket where the pawnticket has been lost, mislaid, destroyed or fraudulently obtained from the pawner.

(2) If a pawnbroker fails in any respect to comply with the requirements of this section he shall incur a penalty not exceeding \$40. 1 Geo. V. c. 50, s. 7. Penalty for noncompliance.

8.—(1) Every pawnbroker who takes a pledge in pawn whereon a sum exceeding \$1 is lent shall, before he lends the money thereon, enter in English in a fair and legible manner in a book to be kept by him for that purpose a description of the pledge, the sum lent thereon, with the day of the month and year, and the name and a description of the pawner, and the name of the street and number of the house where he resides, and whether he is a lodger in or the keeper of such house, by using the letter L if a lodger, and the letter H if a housekeeper, and also the name and place of abode of the owner according to the information of the pawner, into all which circumstances the pawnbroker shall inquire of him before any money is lent. Entries to be made by pawnbrokers.

(2) If the sum lent does not exceed \$1, a similar entry shall be made in such book within four hours after the goods have been pawned. If sum does not exceed \$1.

(3) Where more than \$2 is lent upon a pledge the entries shall be made in respect thereof in a separate book to be kept for that purpose. Separate book for pledges over \$2.

(4) The entries shall be numbered in the books consecutively in the order in which the pledges are pawned in the following manner, viz.: the first pledge received in pawn as No. 1, the second as No. 2, and so on until the end of the month, and in like manner in every succeeding month, and upon every pawnticket respecting such pledge, shall be written the number of entry of the pledge so entered in the book. 1 Geo. V. c. 50, s. 8. Entries, how to be made.

9. At the time of taking any pledge a note or memorandum, written or printed, shall be given to the pawner containing a description of the pledge and a statement of the sum lent thereon, with the day of the month and year, and the name of the pawner and the name of the street, number of the house where he resides, and whether he is a lodger in or the keeper of such house, by using the letters L or H, and upon such note or memorandum, or on the back thereof, shall be written or printed the name and place of abode of the pawnbroker and the rates of interest which may lawfully be Note or memorandum (ticket) for the pawner.

charged, which note or memorandum the pawner is required to take, and unless he takes the same the pawnbroker shall not take the pledge in pawn. 1 Geo. V. c. 50, s. 9.

Charges for ticket if less than \$20.

10.—(1) When the sum lent is less than \$20 the pawnbroker may take five cents for the pawnticket.

If more.

(2) When the sum lent is \$20 or more he may take ten cents. 1 Geo. V. c. 50, s. 10.

The ticket to be afterwards produced.

11. Except as hereinafter provided the pawnbroker shall not be bound to re-deliver the goods unless and until the pawnticket is produced and delivered to him. 1 Geo. V. c. 50, s. 11.

Duplicate ticket.

12. A duplicate of the pawnticket shall be affixed to the pledge, and, where the pledge is redeemed, the pawnbroker shall write or endorse on the duplicate the profit taken by him for the pledge, and shall keep the duplicate in his custody for one year after redemption. 1 Geo. V. c. 50, s. 12.

UNLAWFUL PAWNING.

Penalty for pawning goods of others.

13.—(1) Any person who knowingly and designedly pawns anything being the property of another person, unless employed or authorized by the owner so to do, shall incur a penalty of not less than \$4 nor more than \$20, and a further penalty of a sum equal to the full value of the pledge as ascertained by the convicting justice.

Penalties, how applied.

(2) The penalties shall be applied towards making satisfaction to the person injured, and defraying the costs of the prosecution, as may be adjudged reasonable by the convicting justice. 1 Geo. V. c. 50, s. 13.

Consequences of taking linen, wearing apparel, unfinished goods, etc.

14. A pawnbroker who knowingly takes in pawn any linen or wearing apparel, or unfinished goods, or materials entrusted to any person to wash, scour, iron, mend, manufacture, work up, finish or make up, shall be guilty of an offence against this Act and shall incur a penalty not exceeding double the amount of the loan, and shall forthwith restore the pledge to the lawful owner in the presence of the convicting justice or as may be directed by him. 1 Geo. V. c. 50, s. 14.

Imp. Act 35-36 V., c. 32, s. 35.

Search warrant.

15.—(1) If the pawnbroker, on request by a constable authorized by a search warrant issued under the authority of *The Ontario Summary Convictions Act* to search the shop, refuses to open the shop and permit it to be searched the constable may break it open and search as he may think fit therein for such goods or articles doing no wilful damage, and any pawnbroker or other person who opposes or hinders the search shall incur a penalty not exceeding \$100.

Rev. Stat. c. 90. Imp. Act 35-36 V., c. 93, s. 36, part.

Penalty.

(2) If in the search any of the goods in respect of which the warrant was issued are found and the property of the owner in the same is proved to the satisfaction of the justice he shall cause the same to be forthwith restored to the owner. 1 Geo. V. c. 50, s. 15.

Restoration
of goods
found on
search.

Imp. Act
35-36 V.
c. 93, s. 86,
part.

[As to search warrants see *The Ontario Summary Convictions Act, R.S.O. c. 90.*]

REPORTS TO POLICE.

16.—(1) Every pawnbroker shall before 10 o'clock in the forenoon of every business day report to the chief constable or to such other person as may be designated by by-law of the council of the municipality, on forms to be furnished by the corporation thereof, a description of all pledges received by him in pawn on the next preceding business day together with the numbers of the pawntickets issued therefor and the amounts loaned.

Daily report
to police.

(2) Every person contravening this section shall incur a penalty not exceeding \$40. 1 Geo. V. c. 50, s. 16.

17. The chief constable or an officer authorized in writing by him or by the police magistrate, or any member of the Ontario Provincial or Dominion police force may at all times inspect a pawnbroker's book and shall have access to all books and papers and all pledges and when engaged in such inspection may take with him such other persons as he may deem advisable. 1 Geo. V. c. 50, s. 17.

Inspection
by police.

GOLD AND SILVER NOT TO BE MELTED.

18. Gold or silver which has been pawned shall not be melted by a pawnbroker unless specially authorized by the council of the municipality. 1 Geo. V. c. 50, s. 18.

Gold and
silver not to
be melted.

RIGHT OF HOLDER OF PAWNTICKET.

19. The holder for the time being of a pawnticket shall, as between the pawner and the pawnbroker, be presumed to be the person entitled to redeem the pledge, and, subject to the provisions of this Act, the pawnbroker shall accordingly, on payment of the loan and profit, deliver the pledge to the person producing the pawnticket. 1 Geo. V. c. 50, s. 19.

Rights of
holder of
ticket.

35-36 Vict.
(Imp.), c. 93,
s. 25.

PLEDGE DESTROYED OR DAMAGED BY FIRE.

20.—(1) Where a pledge is destroyed or damaged by or in consequence of fire the pawnbroker shall nevertheless be liable on application within the period during which the pledge would have been redeemable, to pay the value of the pledge after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

Liability of
pawnbroker
in case of
fire.

Imp. Act
35-36 V.
c. 93, s. 27.

Insurable
interest of
pawnbroker.

(2) A pawnbroker shall have an insurable interest in the pledge to the extent of the value so estimated. 1 Geo. V. c. 50, s. 20.

REDEMPTION OF PLEDGES.

Time for
redemption.

21.—(1) If within one year after a pledge has been pawned exclusive of the day on which it was pawned the pawner, or other person on his behalf, tenders to the pawnbroker the pawnticket and also the principal money borrowed and the profit according to the lawful rates, and the person who took the pledge neglects or refuses, without reasonable cause, to deliver back the goods so pawned the pawner may make oath thereof before a justice of the peace, who shall summon such person before him, and shall examine on oath the parties and their witnesses touching the premises.

Rights of
pawner.

Tender, and
consequences
of refusal.

(2) If tender of the pawnticket with the principal sum lent, and lawful profit thereon, is proved to have been made within such time, then on payment by the pawner of the principal money and the lawful profit due thereon, or, if the pawnbroker refuses to accept thereof on tender before the justice, the justice shall, by order under his hand, direct the pledge to be forthwith delivered to the pawner, or, if it has been sold, embezzled, lost, mislaid or destroyed, shall direct the pawnbroker to make satisfaction for the value thereof to be fixed by the justice, subject to the provisions of section 20, and if the pawnbroker neglects or refuses to deliver up the pledge or to make satisfaction for the value thereof the justice shall commit him to the common gaol for a period not exceeding three months or until he delivers up the pledge, or makes satisfaction for the value thereof pursuant to the order. 1 Geo. V. c. 50, s. 21.

Compensa-
tion for
depreciation
of pledge.

Imp. Act
35-36 V.
c. 93, s. 28.

22. If a person entitled and offering to redeem a pledge shows to the satisfaction of a justice of the peace that the pledge has become or has been rendered of less value than it was at the time of the pawning thereof by or through the default, neglect or wilful misbehaviour of the pawnbroker the justice may award a reasonable satisfaction to the owner of the pledge in respect of the damage, and the amount awarded shall be deducted from the amount payable to the pawnbroker, or shall be paid by the pawnbroker, as the case requires, in such manner as the justice directs, and in case of default the pawnbroker shall be liable to the punishment mentioned in section 21. 1 Geo. V. c. 50, s. 22.

Protection of
owners and
persons not
having
pawntickets.

23. The provisions of this section shall have effect for the protection of persons entitled to redeem a pledge and pawners not having their pawntickets to produce.

35 and 36
Vict. c. 93,
s. 29 (Imp.).

(a) Any person claiming to be entitled to redeem a pledge, but not holding the pawnticket, may apply

to the pawnbroker for a copy of the pawnticket and a printed form of affidavit which the pawnbroker shall deliver to him;

- (b) If the claimant proves to the satisfaction of a justice of the peace his right to redeem the pledge and on or before the third day after the day on which the form of affidavit is delivered to him by the pawnbroker, exclusive of days on which the pawnbroker is prohibited from carrying on business, delivers back to the pawnbroker the affidavit duly sworn and endorsed with a certificate of the justice that such proof has been made, the claimant shall have, as between him and the pawnbroker, all the rights and remedies which he would have had if he had produced his pawnticket;
- (c) The pawnbroker shall not be bound to deliver the pledge to any person until the expiration of such three days;
- (d) The pawnbroker shall be indemnified for delivering the pledge, or otherwise acting in conformity with the affidavit and certificate, unless he has notice that the affidavit is fraudulent or false in any material particular;
- (e) If the money lent is under \$20 the pawnbroker may take for the copy and affidavit five cents, or if it is \$20 or more he may take ten cents. 1 Geo. V. c. 50, s. 23.

[As to lawful rates see R. S. C. Cap. 121, secs. 3, 4.]

24.—(1) A pledge pawned for \$2 or less if not redeemed within the year of redemption shall, at the end thereof, become and be the pawnbroker's absolute property.

(2) A pledge pawned for more than \$2 shall continue redeemable until it is disposed of, as in this Act provided, although the year of redemption has expired. 1 Geo. V. c. 50, s. 24.

SALE OF PLEDGES.

25.—(1) When the sum lent exceeds \$2 the pledge shall be sold at public auction and not otherwise.

(2) Before such sale the articles pawned shall be exposed to public view, and an advertisement thereof containing the name and place of abode of the pawnbroker, a description of the articles separately, the month the pledge was received in pawn and the number of the pledge shall be published on two separate days in a public newspaper published in the municipality and the second advertisement shall be published at least two clear days before the first day of sale.

Pledges for \$2 or less not redeemed in time forfeited.
Imp. Act 35 and 36 V. c. 93, s. 17.
Pledges over \$2 redeemable until sold.
Imp. Act 35 and 36 V. c. 93, s. 18.
When to be at public auction.

Exposition of goods and advertisement.

Penalty for
not properly
describing.

(3) If the articles are not described separately in the advertisement the pawnbroker shall incur a penalty payable to the owner of the pledge of not less than \$8 nor more than \$40.

Bidding by
pawnbroker.

Imp. Act
35 and 36 V.
c. 98, s. 19,
part.

(4) A pawnbroker may bid for and purchase at a sale by auction made or purporting to be made under this Act a pledge pawned with him, and on such purchase he shall be deemed the absolute owner of the pledge purchased.

How to be
taken.
Idem. Sched.
5 (7).

(5) Where a pawnbroker bids at a sale the auctioneer shall not take the bidding in any other form than that in which he takes the biddings of other persons at the same sale, and the auctioneer on knocking down any article to a pawnbroker shall forthwith declare audibly the name of the pawnbroker as purchaser.

Account of
sales to be
kept and
booked.

(6) The pawnbroker shall enter in a book to be kept for that purpose a just account of the sale, showing therein the day of the month on which the articles were pledged, the name of the pawner, the day when, and the money for which each article pledged was sold, and the name and abode of the auctioneer.

Disposal of
surplus.

(7) If the pledge is sold for more than was due thereon, the overplus, after deducting the necessary costs and charges of the sale and advertisement, shall be paid to the pawner by whom or upon whose account the pledge was pawned.

Pawner may
inspect
entries.

(8) The pawner or the person for whom the pledge was pawned or his executor, administrator or assignee shall have the right to inspect the entry made of the sale on paying five cents for the inspection.

Consequence
of refusal
to permit
inspection.

(9) If the pawnbroker refuses to permit the pawner or the person for whom the pledge was pawned or his executor, administrator or assignee, upon the production of the probate or letters of administration or the assignment, to inspect such entry, or if the pledge was sold for more than the sum entered in such book, or if the pawnbroker did not make such entry, or did not in good faith sell the pledge according to the provisions of this Act, or refuses to pay the overplus on demand, in addition to any other liability, he shall incur a penalty of not less than \$40 or more than \$100, and the convicting justice may award the whole or any part of the penalty to the person aggrieved. 1 Geo. V. c. 50, s. 25.

RESTRICTIONS UPON PAWNBROKERS.

Restrictions
upon pawn-
brokers.

26.—(1) A pawnbroker shall not—

(a) purchase any article or receive or take any pledge in pawn from any person who appears to be under the age of fifteen years, or to be intoxicated; or

- (b) purchase or take in pawn a pawnticket issued by any other pawnbroker; or
- (c) employ or permit any servant or other person under sixteen years of age to take pledges in pawn; or
- (d) carry on business of a pawnbroker on Sunday, Good Friday, Christmas Day or any day appointed by the Governor-General or the Lieutenant-Governor for a general fast or thanksgiving, or on any other day before eight o'clock in the morning or after eight o'clock in the evening, except on Saturday evening and the evenings preceding Good Friday and Christmas Day, on which evenings he may keep his shop open until ten o'clock; or
- (e) under any pretence purchase, except at public auction, any pledge while in pawn with him; or
- (f) suffer any pledge while in pawn with him to be redeemed with a view to his purchasing it; or
- (g) make any contract or agreement with any person pawning or offering to pawn any article, or with the owner thereof for the purchase, sale or disposition thereof, within the time of redemption; or
- (h) sell or otherwise dispose of any pledge pawned with him except at such time and in such manner as is authorized by this Act.

(2) For any contravention of this section a pawnbroker shall incur a penalty of not less than \$20 or more than \$40.
 1 Geo. V. c. 50, s. 26.

27. When the justice is of the opinion that the production of any pawnbook, voucher, pawnticket or other document, which is or ought to be in the hands, custody or power of a pawnbroker is necessary he shall summon him to attend with it, and the pawnbroker shall be bound to produce it in the state in which it was when the pledge was pawned, and if he neglects or refuses to attend or to produce it in its true and perfect state he shall, unless he shows good cause to the satisfaction of the justice, incur a penalty of not less than \$20 nor more than \$40. 1 Geo. V. c. 50, s. 27.

28. No fee shall be taken by a justice of the peace for any summons or warrant granted by him under this Act, so far as the same relates to a pledge. 1 Geo. V. c. 50, s. 28.

PENALTIES.

29. Unless where otherwise provided all penalties recovered under this Act shall belong to the municipality in which

Imp. Act
35-36 V.
c. 93, s. 32.

Penalty.

Pawnbroker
bound to
produce
pawn-books,
etc.

No fee on
Justice's
summons or
warrant.

Application
of penalties.

the offence was committed and be paid over to the treasurer thereof. 1 Geo. V. c. 50, s. 29.

Recovery
of penalties.

Rev. Stat. c. 90.

Limitation
of prosecu-
tions.

30. The penalties imposed by or under the authority of this Act shall be recoverable under *The Ontario Summary Convictions Act*, except that an information may be laid within twelve months next after the offence was committed. 1 Geo. V. c. 50, s. 30.

PERSONAL REPRESENTATIVE OF PAWNBROKER.

Act to extend
to executors,
administra-
tors, etc.

31. The provisions of this Act shall extend to the executor and administrator of a deceased pawnbroker, but he shall not be answerable for any penalty personally or out of his own estate unless the same was incurred by reason of his own act or neglect. 1 Geo. V. c. 50, s. 31.

CHAPTER 177.

An Act respecting Private Detectives.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Private Detectives Act*. Short title.
9 Edw. VII. c. 83, s. 1.

2. No person shall engage in or advertise the business of ^{License.}
a private detective, or indicate upon any letter, document or paper that he is engaged in the business of a private detective without having first obtained a license from the Treasurer of Ontario. 10 Edw. VII. c. 26, s. 4.

3. Any person desiring the license in section 2 of this Act ^{Application.}
mentioned, shall apply in writing, Form 1, to the Treasurer of Ontario, and shall enter into a bond, approved by the Treasurer, with two sufficient sureties or executed by a guarantee company, in the sum of \$2,000 for the faithful, ^{Security.}
honest and lawful conduct of such business by such applicant. 9 Edw. VII. c. 83, s. 3.

4. The Treasurer of Ontario, upon such application and ^{Issue of}
upon such further inquiry and investigation as he may deem ^{license.}
proper of the character and competency of the applicant and upon approving the bond in section 3 mentioned and upon receiving from the applicant the fee of \$200, may issue and deliver to such applicant a license, Form 2, to conduct such business for the term of one year from the date thereof; and such license may be renewed annually on a further pay- ^{Renewal.}
ment of \$200 per annum, but shall be revocable at any time by the Treasurer for cause. 9 Edw. VII. c. 83, s. 4.

5. Nothing in this Act shall apply to employees of duly ^{Saving as to}
licensed private detectives; but a licensed private detective ^{employees of}
shall be responsible for the conduct of his employees. 9 Edw. ^{detectives.}
VII. c. 83, s. 5.

6. No person while holding the position of a Provincial or ^{Provincial or}
county constable shall do any of the things for which a ^{county}
license is required by section 2 of this Act. 9 Edw. VII. ^{constables}
c. 83, s. 6. ^{not to act as}
^{detectives.}

7. Any person doing anything in contravention of this Act ^{Penalty.}
shall incur a penalty of not less than \$200 or more than

Rev. Stat. c. 90. \$500 recoverable under *The Ontario Summary Convictions Act*. 9 Edw. VII. c. 83, s. 7.

Saving as to
legal
profession.

8. This Act shall not apply to barristers, solicitors or their employees. 9 Edw. VII. c. 83, s. 8.

FORM 1.

(Section 3.)

AN ACT RESPECTING PRIVATE DETECTIVES.

I, _____ of the _____ of _____ in the
County of _____, apply for a license under the said Act to
engage in the business of a private detective and furnishing
information as provided in the said Act.

Dated the _____ day of _____, 19 _____.

To the Honourable
The Provincial Treasurer.

FORM 2.

(Section 4.)

AN ACT RESPECTING PRIVATE DETECTIVES.

Pursuant to the provisions of this Act I hereby grant permission
to _____ of the _____ of _____ in the County
of _____ to carry on the business of a private detective
and furnishing information under the provisions of the said Act.

This license is to be in force for one year from this date.

Dated this _____ day of _____, 19 _____.

Provincial Treasurer.

Government
Publications

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Statutes Ontario. Statutes
Ont The revised statutes of Ontario, 1914.
Vol. 1.

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